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LETTER OF SUBMITTAL

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, D.C., April 16, 1982.

Hon. CHARLES H. PERCY,
Chairman, Committee on Foreign Relations,
U.S. Senate.

DEAR MR. CHAIRMAN: In 1971 the Congressional Research Service prepared for your committee the study, "The Senate Role in Foreign Affairs Appointments." Attached is a revision of that study that brings it up to date to reflect recent trends, practices, and problems. In accordance with your request, we have also included an analysis of various options for changes that might make the confirmation process more efficient or more effective.

The study was prepared in the Foreign Affairs and National Defense Division by Ellen C. Collier and Joel M. Woldman, Specialists in U.S. Foreign Policy, and Mark M. Lowenthal, Specialist in National Defense.

Sincerely,

GILBERT GUDE, *Director.*

FOREWORD

A decade ago, when I first joined the Committee on Foreign Relations we published a comprehensive study on "The Senate Role in Foreign Affairs Appointments" prepared by the Congressional Research Service. That study provided the Senate with a much-needed overview of its historic and contemporary role in providing the President with its advice and consent on nominations in the field of foreign affairs.

I have requested the Congressional Research Service to revise this study. In doing so, it has been updated in a number of significant respects. The study provides current statistics on nominations within the Committee's jurisdiction as well as information on the increase in the number of appointments requiring confirmation. It details the current procedures employed by the Committee to review nominations and provides some insight on the procedures used in the Executive Branch to select nominees for foreign affairs appointments.

The study also considers the arguments for and against requiring the National Security Advisor and the Director of Politico-Military Affairs at the Department of State, neither of whose posts are statutory or subject to confirmation, to be approved by the Senate. Lastly, the study explores options for change that may assist the Committee in striking a reasonable balance between its obligation to give appropriate consideration to nominations while carrying out its other significant responsibilities including the consideration of treaties and legislation, and oversight of the Executive Branch.

I express the Committee's appreciation to those who participated in this project, specifically, Ellen C. Collier who also contributed to the original study, and Joel M. Woldman, CRS specialists in U.S. Foreign Policy; and Mark M. Lowenthal, CRS specialist in National Defense.

CHARLES H. PERCY,
Chairman.

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INTRODUCTION AND SUMMARY OF FINDINGS

Under the Constitution, the Senate has a unique role in two aspects of foreign policy. One of these is the making of treaties, and the other is the appointment of "Ambassadors, other public Ministers, and Consuls" and other officers. The purpose of this study is to examine the latter, the role of the Senate in making appointments relating to the conduct of foreign policy.

The Senate's share of the appointment power has seldom been used in recent years in a way which has influenced U.S. foreign policy as dramatically as its role in the treaty-making power. Nevertheless, the potency of the confirmation requirement was illustrated in the decision of the Senate Foreign Relations Committee in 1981 to report unfavorably the nomination of Ernest Lefever to the post of Assistant Secretary of State for Human Rights and Humanitarian Affairs.

The requirement for Senate confirmation of nominees serves the primary purpose of keeping up the caliber of appointees by providing a check on the choices and an opportunity for scrutiny. In the foreign affairs field it provides a means for the Senate to assure that the United States is ably represented abroad. It also provides a channel of communication between Senators and executive branch officials on the problems and goals of U.S. foreign policy. Finally, the hearings on nominations can be a method of overseeing the administration of foreign policy by the executive branch.

In the vast majority of cases, nominees clearly are qualified and the Senate, having verified this, acts to make it possible for them to take office as quickly as possible. In some cases, the knowledge of the State Department or the White House that a nominee will be subject to intensive investigation and a vigorous hearing process causes greater preparation and study by the nominee. It may also, on occasion, cause reconsideration of the decision to send the nomination forward. In those cases where the committee does not wish to recommend a nominee, it usually proceeds quietly and informally in an effort to prevent the confirmation of a person deemed unqualified, unsuitable, or having unacceptable policy views, without complicating diplomatic relations. On occasion, however, the Senate confirmation process becomes the focus of highly public and contentious debate over the appropriateness of an administration's nominee and/or the policies he or she advocates.

There are practical limits to the time that the Senate can devote to appointments in view of its many other responsibilities and the need to fill posts as rapidly as possible. The number of nominations has steadily increased in the postwar period, particularly in the foreign affairs field.

"Ambassadors, other public Ministers and Consuls" and "Judges of the Supreme Court" are the only officers whose appointments are specified in the Constitution as requiring the advice and consent of the Senate. The Constitution provides, however, that other officers established by law are to be confirmed by the Senate although Congress may vest the appointment of such officers in the President alone, the heads of Department, or the Courts.

Under this provision the number of offices that require Senate confirmation has multiplied in the years since the Second World War. More than 50 provisions of law establish requirements for confirmation in the foreign relations fields. These laws require confirmation of approximately 140 individual officials in foreign affairs agencies and members of advisory commissions or representatives or delegates to international organizations, not including Foreign Service officers. The following chart numerically summarizes the individual nominations (not counting Ambassadors, Consuls, and Ministers, etc.) that are required by law to be confirmed and are referred to the Foreign Relations Committee:

	Number of positions
Foreign Affairs Agencies:	
Department of State	26
Agency for International Development	11
Peace Corps	2
U.S. Arms Control and Disarmament Agency	6
International Communication Agency	6
Advisory Commissions and Boards of Directors:	
Overseas Private Investment Corporation	8
Inter-American Foundation	7
General Advisory Commission on Arms Control	15
Board for International Broadcasting	5
U.S. Advisory Commission on Public Diplomacy	5
International Organizations:	
United Nations	16
UNESCO	10
World Health Organization	1
International Atomic Energy Agency	3
North Atlantic Treaty Organization	1
World Bank Group	6
Inter-American Development Bank	3
Asian Development Bank	3
African Development Bank	2
International Joint Commission	3
Total	139

In addition, the number of Ambassadors, Consuls and other public Ministers has similarly increased with the establishment of many new independent nations. There are now more than 130 Ambassadors accredited to independent countries. Finally, routine lists of Foreign Service officers to be appointed or promoted add another 1,000 or more nominations to be considered each year.

As a result, the number of nominations in the foreign affairs field that are submitted to the Senate averages approximately 1,400 a year. While most of these are names of Foreign Service officers on routine lists, as many as 150 may be individual nominations.

The large volume of nominations raises several questions. How much time should be spent on nominations? How can the confirmation power best be used by the Senate as part of its role in the conduct of foreign policy? Is it better to give brief consideration to a large number of

nominations in order to retain the right to veto appointments over a wide range, or is it better to give more thorough consideration to a smaller number?

The twin objectives of playing an appropriate role in the conduct of foreign policy and efficiency in handling nominations may sometimes be incompatible. Nevertheless, some proposals might either advance both objectives or advance one without impairing the other. Of the numerous options for improving the process that are discussed in this study, five would seem to merit particular attention:

(1) *Reduce the number of nominations required by law to be submitted for confirmation.*—It may be possible to eliminate a number of confirmation requirements on the grounds that policies are decided by higher level officials, or that the original need for confirmation of a particular post may no longer exist. In the case of some advisory commissions, boards of directors, and delegations to international organizations, the extent of independent authority involved may not be sufficient to merit Senate confirmation. In some cases, confirmation of the Chairman only might be seen as an adequate Senatorial check.

(2) *Reduce the number of full committee hearings held on nominations.*—In 1981 the Foreign Relations Committee held hearings on 136 nominations, requiring less than an hour in many cases but days in other cases. Instead of holding hearings on almost all individual nominations for permanent, full-time positions as it now does, the committee could hold hearings routinely only on a selected list of major policymaking positions and schedule hearings on nominees to other positions only on the specific request of a member. As an alternative, it could retain its current policy of holding hearings on all permanent, full-time positions, but conduct them at the subcommittee level, thereby reducing the burden of hearings on individual Senators.

(3) *Establish a central Senate Office on Appointment Investigation.*—Such an office could undertake a screening process and concentrate on the integrity and financial interests of nominees, leaving the Committee free to focus on troublesome irregularities and foreign policy aspects. An alternative would be to ask the General Accounting Office to assist in the auditing of a nominee's personal finances.

(4) *End the practice of courtesy calls.*—Currently, individual nominees routinely pay social calls on the Chairman and Ranking Minority Members of the full committee and the relevant subcommittees prior to their nomination hearings. The custom has been found useful by the State Department because it acquaints diplomatic officials with Senators on the Foreign Relations Committee. A former staff director of the committee has questioned the practice on the grounds of the propriety of having private meetings between nominees and members of the Senate committees passing judgment on their nominations. In any event, this practice, though rooted in traditions of etiquette that sometimes produce valuable encounters, may also have adverse effects. In addition, it puts a time requirement on both Senators and nominees that many times cannot be justified.

(5) *Require Senate confirmation for the several influential foreign policy posts that are not now subject to confirmation.*—Currently two important appointments in the foreign affairs field which are made without Senate confirmation—the Assistant to the President for National Security Affairs and the State Department's Director of the

Bureau of Politico-Military Affairs—are of particular interest to advocates of this option. In addition, some representatives or delegates to international organizations do not require confirmation. Legislation to make some of these posts subject to Senate confirmation might therefore be considered. It is also worth considering the U.S. role in multilateral international conferences which negotiate treaties or other international agreements. Often the U.S. delegates are not subject to confirmation. These positions can be of particular importance because the Senate, in passing on multilateral agreements, is often under pressure not to attach reservations or suggest amendments that might require renegotiation by a large number of nations. Moreover, other multilateral agreements not having treaty status are not referred to the Senate for its advice and consent. Submission to the Senate of the nominations of U.S. delegates may offer one way to increase the prospects that the Senate will better share in shaping the positions advocated by U.S. delegates.

I. The Constitutional Background

The exercise of power over appointments in the field of foreign affairs is part of two broader constitutional questions: (1) the relationship between Congress and the Executive with respect to all appointments, and (2) the respective roles of the Senate and the President in the making of foreign policy. The Senate's veto right over appointments by the President and the congressional role in the establishment of offices comprise one of the major elements of the check and balance system which characterizes the U.S. form of government. Moreover, the senatorial right to confirm was intended to perform another function. History indicates that the framers of the Constitution divided the power to make diplomatic appointments in particular between the President and the Senate as part of a plan to share the responsibility for foreign policy between Congress and the President, with a special advisory role for the Senate.

A. THE SHARING OF THE APPOINTMENT POWER BETWEEN THE PRESIDENT AND THE SENATE

Article II, section II, of the Constitution provides the basis for the appointment power. Outlining the powers of the President, it states:

> He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors other public Ministers and Consuls. Judges of the Supreme Court and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law; but the Congress may by Law vest the Appointment of such inferior Officers as they think proper in the President alone, in the Courts of Law, or in the Heads of Departments.
>
> The President shall have Power to fill up Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

In the Constitutional Convention, one group had favored granting the appointing power to the Senate, believing that if the appointment power were given to the Executive it would contribute to transforming the republic into a monarchy. Supporters of this view also believed that the several Members of the Senate would be more adequately informed about the individuals to be appointed than a single person. Another group had favored vesting the appointing power in the President in order to make him a strong Executive and in the belief that the practice which had prevailed in some States, of having the State legislatures make appointments, had been unsatisfactory because of political bargaining.

An early draft of the Constitution provided that ambassadors and Justices of the Supreme Court be appointed by the Senate. However, the text finally adopted was a compromise, giving the President the power to nominate but requiring the advice and consent of the Senate before appointment.

The language finally adopted coupled with the provision in section 3 of article 2 that the President "shall Commission all the Officers of the United States," has led to recognition of several steps in the appointment process. One is the nomination of the candidate for a particular post by the President. Another is the assent of the Senate to the appointment of the nominee. A third is the final appointment and commissioning of the appointee by the President.

According to one legal authority: [1]

> The fact that the power of nomination belongs to the President alone prevents the Senate from attaching conditions to its approval of an appointment, such as it may do to its approval of a treaty. In the words of an early opinion of the Attorney General: "The Senate cannot originate an appointment. Its constitutional action is confined to the simple affirmation or rejection of the President's nominations, and such nominations fail whenever it rejects them. The Senate may suggest conditions and limitations to the President, but it cannot vary those submitted by him, for no appointment can be made except on his nomination, agreed to without qualifications or alteration." This view has been borne out by early opinion as well as by the record of practice under the Constitution.

Support for the view that a more limited role was intended for the Senate in the appointing process than in the treaty-making process is found in the essay by Senator Henry Cabot Lodge written near the turn of the century.

As explained by Senator Lodge, the placing of the "by and with the advice and consent of the Senate" clause in the power concerning appointments makes it clear that the President alone has the power to nominate and the Senate's role is confined to advising and consenting on the appointment of a given person and for this reason the Senate cannot amend a nomination as it can amend a treaty, Senator Lodge wrote: [2]

> It is * * * well to note that the carefully phrased section gives the President absolute and unrestricted right to nominate, and the Senate can only advise and consent to the appointment of, a given person. All right to interfere in the remotest degree with the power of nomination and the consent power of selection is wholly taken from the Senate. Very different is the wording in the treaty clause. There the words "by and with the advice and consent of" come in after the words "shall have power" and before the power referred to is defined. The "advice and consent of the Senate" are therefore coextensive with the "power" conferred on the President, which is "to make treaties," and apply to the entire process of treaty making.

The President may make recess appointments. The Constitution states "The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting Commissions which shall expire at the end of their next session" (Art. II, Sec-2). It has long been interpreted that "happen" means "happen to exist" and that whenever a vacancy may have first occurred, if it continues after the Senate has ceased to sit (except for a holiday or very brief temporary adjournment), and thus cannot be consulted, the President may make a recess appointment.[3] Under law, if the vacancy existed when the Senate was in session the recess appointee may receive no salary until he has been confirmed by the Senate unless (1) the vacancy arose within 30 days before the end of the Senate session

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[1] U.S. Library of Congress. Congressional Research Service. The Constitution of the United States of America; Analysis and Interpretation. Senate Document 92–82. Washington, U.S. Government Printing Office, 1973, pp. 527–528. Hereafter referred to as Annotated Constitution.

[2] Lodge, Henry Cabot, A Fighting Frigate and Other Essays and Addresses, Freeport, N.Y., Books for Libraries Press, 1969, pp. 231–232.

[3] Annotated Constitution, op. cit., p.. 529.

or (2) the nomination of another person for that office was pending at the end of the session or (3) the nomination of another person had been rejected within the 30 days prior to the session's end. Recess appointments made in these cases must be submitted not later than 40 days after the beginning of the next session of the Senate.[4]

In addition to its role in appointments, the Senate shares in the related power of establishing and regulating offices. It has been generally accepted that there is a constitutional distinction between the creation of an office and the appointment thereto.[5] The former is done by law and takes place by virtue of Congress' power to pass all laws necessary and proper for carrying into execution the powers which the Constitution confers upon the Government of the United States. In deciding to establish a particular office, Congress has the power to determine the qualifications of the officer and thus may limit the range of choice which the Executive has in picking an individual to fill that particular post. There have been instances when Congress has required that appointees be representative of a particular political party, or region, or industry. It has even designated appointees by name. However, such actions are rare and are largely confined to domestic concerns. An exception is the legislation relating to the Executive Board of the Overseas Private Investment Corporation which specifically requires one member each to represent small business, labor, and cooperatives.

Limits have been established on the extent to which Congress can change the appointments process. In *Buckley* v. *Valeo*, the Supreme Court struck down the manner of making appointments to the Federal Election Commission. This included appointment by Congress of four of the six members of the Commission, with all of the members to be confirmed by the majority of both houses of Congress. The Court in the *Buckley* case held that Congress lacked the power to appoint officers of the United States.[6]

To summarize, although the power of nomination is the President's, the power to effect an appointment is a shared power, inasmuch as the Senate may veto the President's nominee. In addition, the right of Congress to establish appointive offices by law and the knowledge that a nominee must be approved by the Senate mean that the Senate is frequently in a position to influence the selection of nominees to fill important offices.

B. APPOINTMENTS IN THE FOREIGN RELATIONS FIELD

The intention of the framers of the Constitution that the Senate should have a share in the making of appointments is more explicit

[4] 5 U.S.C. 5503.

"(a) Payment for services may not be made from the Treasury of the United States to an individual appointed during a recess of the Senate to fill a vacancy in an existing office, if the vacancy existed while the Senate was in session and was by law required to be filled by and with the advice and consent of the Senate, until the appointee has been confirmed by the Senate. This subsection does not apply—

"(1) if the vacancy arose within 30 days before the end of the session of the Senate;

"(2) if, at the end of the session, a nomination for the office, other than the nomination of an individual appointed during the preceding recess of the Senate, was pending before the Senate for its advice and consent; or

"(3) if a nomination for the office was rejected by the Senate within 30 days before the end of the session and an individual other than the one whose nomination was rejected thereafter receives a recess appointment.

"(b) A nomination to fill a vacancy referred to by paragraph (1), (2), or (3) of subsection (a) of this section shall be submitted to the Senate not later than 40 days after the beginning of the next session of the Senate."

[5] Annotated Constitution, op. cit., p. 523.

[6] *Buckley* v. *Valeo*, 424 U.S. 1, 109–143 (1976).

in the case of diplomatic officers than in any other case except the Justices of the Supreme Court. Except for Justices of the Supreme Court, the only officers specified in the Constitution itself as requiring the advice and consent of the Senate are "ambassadors, other public ministers and consuls." Most nominations are submitted to the Senate under the clause requiring the advice and consent of the Senate for "all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law."

The requirement that ambassadors, ministers, and consuls be subject to Senate confirmation appears to have been intended as a basic part of the division of the foreign relations powers between Congress and the President, with a special role for the Senate in the making of treaties. The history of the Constitution and the context of treaty-making practice at the time indicate that there was a logical connection between requiring the advice and consent of the Senate for the appointment of ambassadors and ministers and requiring its advice and consent for the making of treaties.

The first draft of the Constitution reported on August 6, 1787, contained a section stating:

> The Senate of the United States shall have power to make treaties, and to appoint Ambassadors, and Judges of the Supreme Court.[7]

There was reason for distributing the power relating to making treaties and appointing ambassadors in essentially the same manner, although only in the case of treaties was a two-thirds majority of the Senate required. In that period the practice was for treaties to be made by ambassadors with full powers granted by the sovereign, usually a king. Prior to the negotiations, the sovereign instructed the ambassador, and, after the negotiations, if the ambassador had stayed within his instructions, it was considered obligatory for the sovereign to ratify the treaty. Thus the dispatch of an ambassador and instruction of him as to the terms desired were vital parts of treaty making. That the framers of the Constitution felt it logical to keep the treatymaking power in the same hands as those responsible for appointing ambassadors is demonstrated by the records of the convention. According to Madison's notes, Morris of Pennsylvania proposed an amendment to the treaty clause stating "but no treaty shall be binding on the U.S. which is not ratified by a law"[8] (a proposal which would have required the consent of the entire Congress, not just the Senate for treaties). However—

> Doctor Johnson thought there was something of solecism in saying that the acts of a Minister with plenipotentiary powers from one Body, should depend for ratification on another body.[9]

In McHenry's notes for that day of discussion, August 23, 1787, the following is recorded after the motion that no treaty should be binding until it received the sanction of the legislature:

> It was said [by Gorham] that a minister could not then be instructed by the Senate who were to appoint him, or if instructed there could be no certainty that the House of Representatives would agree to confirm what he might agree to under these instructions.[10]

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[7] U.S. Constitutional Convention, 1787. Notes of Debates in the Federal Convention of 1787 reported by James Madison. Athens, Ohio, University Press, 1966, p. 138.
[8] Ibid., p. 520.
[9] Ibid., p. 521.
[10] Farrand, Max, The Records of the Federal Convention of 1787, New Haven, Yale University Press, vol. II, p. 395.

Practice in the early years under the Constitution, when some occupants of the Presidency and the Senate had also participated in framing the Constitution, provides further indication of the original expectation, that is, that the power of confirming the appointments of ambassadors and other public ministers would give the Senate a signficant role in the conduct of foreign relations. Frequently nominations were submitted along with a description of the type of diplomatic task the nominee was to perform or agreement he was to seek. In the case of treaties, the appointment of a minister was one step in a series of consultations between the President and the Senate leading to ratification of a treaty. At first the President sought the advice and consent of the Senate on the general idea of seeking a treaty, the appointment of the negotiators, the instructions to the negotiators, solutions to problems which might arise in the course of the negotiations, and, finally, whether the treaty should be ratified.

For example, on January 11, 1792, President Washington nominated William Carmichael, then Chargé d'Affaires at Madrid, and William Short, then Chargé d'Affaires at Paris, to be Commissioners Plenipotentiary for negotiating a treaty with Spain concerning the navigation of the Mississippi. The reasons for seeking to negotiate a treaty were spelled out in an accompanying report by the Secretary of State, Thomas Jefferson. The communication presenting the nominations also contained a clause "saving to the President and the Senate their respective rights as to the ratification" of the proposed treaty. On January 24, 1972, the Senate gave its advice and consent to the appointments. In March, President Washington sent another message to the Senate proposing to extend the negotiations to the subject of commerce, setting forth the instructions and observations which would be given to the commissioners about the treaty to be negotiated, and asking if the Senate would "advise and consent to the extension of the powers of the commissioners, as proposed, and to the ratification of a treaty which shall conform to those instructions, should they enter into such a one. * * *" On March 16, 1792, the Senate passed a resolution stating:

> That they advise and consent to the extension of the powers of the commissioners, as proposed, and that they will advise and consent to the ratification of such treaty as the said commissioners shall enter into with the Court of Spain in conformity to those instructions.[11]

In passing upon nominations of ministers to Paris, London, and The Hague in 1791, the Senate also debated whether permanent diplomatic missions were necessary in these places and for several years the Senate continued to debate the need for establishing a mission as well as the fitness of the nominee. In 1809, after President Jefferson had appointed William Short as Minister to Russia in the previous August and in February submitted the nomination to the Senate, the Senate refused to consent to the appointment. Although it was withdrawn, a motion had been submitted stating that any necessary business between the United States and Russia could be carried out with equal facility by other public agencies without the expense of a permanent minister, and that the appointment at present was "inexpedient and unnecessary." [12]

[11] U.S. Congress, Senate, Executive Journal, vol. I, 1792, p. 115.
[12] U.S. Congress, Senate, Executive Journal, vol. II, 1809, p. 113.

The practice of submitting the instructions by which a nominee was to negotiate a treaty was soon abandoned. When John Jay was nominated to conclude a treaty with Great Britain in 1794, the instructions under which he was to negotiate were not submitted to the Senate, and the Senate rejected a motion that prior to consideration of the nomination the President be requested to inform the Senate of "the whole business with which the provided envoy is to be charged." [13] The debate on the nomination indicated, however, that the Senate "passed not only upon the choice of the envoy but also upon the expediency of the mission itself." [14]

Later the Senate was frequently precluded from passing on the expediency of a mission by the appointment of special agents to negotiate a treaty without submitting their nominations to the Senate, a practice which will be discussed in more detail later. According to one authority, after Washington's administration "reference to the advice and consent of the Senate before the appointment of a commissioner to negotiate a treaty became the exception rather than the rule, and prior consultation with the Senate became equally exceptional." [15] Quincy Wright attributed the discontinuance of the practice of sending to the Senate the nomination of envoys to the President's embarrassment over the Senate refusal in 1813 to approve the appointment of Albert Gallatin, Secretary of the Treasury, as a member of the mission to negotiate the Treaty of Ghent until he had resigned as Secretary of the Treasury.[16] Another authority has pointed out:

> But "the balance of the Constitution" has a way of asserting itself, and in another respect the President has apparently lost authority touching diplomatic appointments. I refer to such legislation as that represented by the acts of March 3, 1893, and of March 2, 1909, the former of which purported to "authorize" the President to appoint "ambassadors" in certain cases, and the latter of which, in repealing the earlier act, ordains in effect that new ambassadorships may be created only with the consent of Congress. The question is: What effect may validly be given such legislation?
>
> During the first 65 years of the Government, Congress passed no act purporting to create any diplomatic rank, the entire question of grades being left with the President. Indeed, during the administrations of Washington, Adams, and Jefferson, and the first term of Madison, no mention occurs in any appropriation act even, of ministers of a specified rank at this or that place, but the provision for the diplomatic corps consisted of so much money "for the expenses of foreign intercourse," to be expended at the discretion of the President. In Madison's second term the practice was introduced of allocating special sums to the several foreign missions maintained by the Government, but even then the legislative provisions did not purport to curtail the discretion of the President in any way in the choice of diplomatic agents, and far less did they raise any implication of a claim of power by Congress to create offices to which, by the terms of the Constitution, he may nominate and, with the advice and consent of the Senate, appoint "ambassadors and other public ministers."
>
> The earliest and the principal precedent for the acts of 1893 and 1909, referred to above, is the act of March 1, 1855. This act provided in its opening section that "from and after the 30th day of June, next, the President of the United States shall, by and with the advice and consent of the Senate, appoint representatives of the grade of envoys extraordinary and ministers plenipotentiary," with a specified annual compensation for each, "to the following countries," etc. * * * [17]

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[13] Ibid.
[14] Hayden, Ralston, The Senate and Treaties, 1789–1817, New York, Macmillan, 1920, p. 70.
[15] Wriston, Henry Merritt. Executive Agents in American Foreign Relations (The Albert Shaw Lectures on Diplomatic History, 1923), Gloucester, Mass., Peter Smith, 1967, p. 112.
[16] Wright, Quincy, The Control of Foreign Relations, New York, Macmillan, 1922, pp. 328–331.
[17] Corwin, Edwin S., The President's Control of Foreign Relations, Princeton, Princeton University Press, 1917, p. 67.

Currently the organization of the Foreign Service is regulated by such legislation as the Foreign Service Act of 1980 and Congress plays an essential role in determining the basis for appointments, grades, and promotions, including the matter of which appointments shall be subject to the confirmation of the Senate.

II. Practice in the Senate on Appointments Relating to Foreign Affairs

According to a study of the confirmation of appointments written by Joseph P. Harris in 1953: [18]

> Although an early draft of the Constitution provided that ambassadors should be appointed by the Senate rather than by the President, they have always been regarded in a peculiar sense as the personal representatives of the President in his conduct of relations with foreign countries. Obviously, they should be persons who enjoy the full confidence of the President; accordingly the Senate has seldom questioned a President's choice of diplomatic representatives. The growing practice within recent years to appoint career men to diplomatic posts has also tended to remove these nominations from the arena of controversy in the Senate. Under the custom which accords the President a free hand in the selections of members of his Cabinet, his choice of Secretary of State has rarely been seriously challenged in the Senate. There have also been few contests over appointments of Assistant and Under Secretaries of State.

This general feeling in the Senate that the President has wide latitude in the choice of diplomatic representatives is buttressed by the record. Year after year the Senate has confirmed the overwhelming majority of nominations in the foreign affairs field. However, the Senate has by no means confirmed every nomination made in this field. Numerous nominations have expired or been withdrawn or, in some cases, rejected because of the personal qualifications of a nominee, political factors, objection to the policies represented by the nomination, or other reasons.

A. Confirmation or Rejection by Senate Vote

The overwhelming majority of nominations in all fields are confirmed. Of the 69,929 nominations submitted to the Senate during 1980, 94 percent were military commissions and promotions, all of which were confirmed. Of the 3,934 civilian nominations, none was formally rejected by a full Senate vote, but 113 were left unconfirmed for various reasons and 10 were withdrawn.[19] Withdrawals are frequently for technical reasons, such as an error in the official papers. In 1981, out of the total 106,616 nominations submitted, 105,284 were confirmed. Of the 5,037 civilian nominations, 4,325 were confirmed; 33 were withdrawn, and most of the remaining unconfirmed nominations were carried over to the next session.[20]

The same pattern is true of the foreign affairs field. Of the total 2,728 nominations referred to the Foreign Relations Committee in the 96th Congress, 2,699 were confirmed. None was formally rejected, but 4 were withdrawn and 25 were returned to the President at the adjournment of the second session.[21] In 1981, the first session of the

[18] Harris, Joseph P., The Advice and Consent of the Senate—A Study of the Confirmation of Appointments by the U.S. Senate, New York, Greenwood Press, 1968 (1st edition 1953), pp. 280–281.

[19] Resume of Congressional Activity of the Ninety-Sixth Congress. Daily Digest. Congressional Record, Dec. 30, 1980. D1593.

[20] Congressional Record, Daily Digest, Jan. 6, 1982. D1613.

[21] U.S. Senate Committee on Foreign Relations. Legislative Activities Report, Ninety-Sixth Congress. Senate Report 97–29, p. 204.

97th Congress, of the 2,365 nominations referred to the Foreign Relations Committee, 2,315 were confirmed. Three nominations were withdrawn by the President including one that had been reported unfavorably by the committee.[22] One nomination was returned to the President at the end of the session.[23] The others were carried over to the next session.

Once a nomination has been reported from the Foreign Relations Committee to the Senate, its prospects of approval are very good. Occasionally, however, such nominations lapse because of lack of floor action. In the 96th Congress, for example, the nomination of Jack Hood Vaughn as Assistant Administrator for Latin America and the Caribbean of the Agency for International Development was ordered reported by the Foreign Relations Committee by a vote of 7 to 5 on August 21, 1980, but the Senate took no action and the nomination was returned to the President upon adjournment. Toward the end of the 96th Congress, approximately a dozen more nominations were reported by the committee but not acted upon by the Senate. This was partly because of the press of business and partly because the 1980 election resulted in a change in party control of the Senate. Sometimes nominations are defeated by a recommittal to the committee, but this has not happened in the foreign affairs field.

Only very infrequently does the Senate reject a nomination in a floor vote. In all areas there have been only 14 such rejections since 1960.[24]

In earlier history, examples may be found of appointments in the foreign affairs field which were rejected in formal floor votes. President Jefferson nominated as Minister to Russia William Short, whose nomination to take charge of American affairs in France during the absence of Jefferson had been the first submitted to and approved by the Senate under the Constitution. His nomination as Minister to Russia was unanimously rejected by the Senate on February 27, 1809, on the grounds that a permanent minister to that country was not needed.

A scanning of the Executive Journal reveals occasional rejections although it does not shed much light on the reasons for the rejections. For example, the Senate resolved that it did not advise and consent to the nomination of Asbury Dickins as consul at London on March 3, 1815; to the appointment of John James Appleton as chargé d'affaires at Rio de Janeiro on March 3, 1821; and to the appointment of Hugh Steele to be consul for the Island of St. Bartholomew on February 24, 1824.

Occasional rejections continued at least up till the First World War. To illustrate, on March 28, 1889, the Senate rejected by a vote of 23 opposed to 16 in favor President Benjamin Harrison's nomination of Murat Halstead, an Ohio journalist, as Minister to Germany although it had been reported favorably by the Senate Foreign Relations Committee.[25] The last rejection in the foreign affairs field found was President Wilson's nomination of James C. McNally as consul

[22] Nomination of Ernest Lefever to be Assistant Secretary of State for Human Rights and Humanitarian Affairs.

[23] Nomination of Maurice H. Stans to be a member of the Board of Directors of the Overseas Private Investment Corporation.

[24] Parris, Judith H. Consideration of Presidential Nominees by Senate Committees. Congressional Research Service Report No. 80–35, p. 4. Rejections included the nomination of Clement F. Haynsworth as Associate Justice of the Supreme Court by a vote of 44–55 on November 23, 1969; and G. Harold Carswell as Associate Justice by a vote of 45–51 on April 8, 1970.

[25] Harris, op. cit., p. 291.

to Nuremberg, Bavaria, which was rejected on April 8, 1914, by a vote of 26 to 24 after having been favorably reported by the Senate Commerce Committee.[26]

Perhaps the most famous rejection in the diplomatic field was that of Martin Van Buren, who later became President, as Minister to the United Kingdom. Van Buren received an interim appointment from President Andrew Jackson on June 2, 1831, and when the Congress convened in December his nomination was referred to and in January favorably reported by the Foreign Relations Committee. The rejection came after the floor debate when a tie vote of 23–23 on the nomination was broken by Vice President John C. Calhoun voting against the nomination.[27]

In addition to confirming or rejecting nominees, the Senate early in history used its share of the appointment power to influence the conduct of foreign policy in other ways, such as changing the composition of various delegations and securing additional information from the President. For example, in 1799, President Adams submitted the nomination of William Murray as Minister to France—

> * * * without consulting his Cabinet and in defiance of public opinion. Before acting upon it, the Senate took the unusual course of attempting to persuade the President to withdraw the nomination. Failing in this, a compromise was effected by which a commission was formed by adding two other names, and the three were confirmed only to avert the downfall of the Federalist Party. * * *[28]

In 1813 President Madison, after first giving them recess appointments, sent to the Senate the nominations of Albert Gallatin, the Secretary of the Department of the Treasury, John Quincy Adams, and James A. Bayard to be envoys to negotiate and sign a treaty with Great Britain. On June 16, 1813, the Senate passed a resolution that the duties of the Secretary of the Treasury and those of envoy to a foreign power were incompatible and should not be held by the same person.[29] A month later, on July 19, 1813, Gallatin's nomination was rejected when the other two nominations were approved. After another Secretary of the Treasury was named and Henry Clay and Jonathan Russell had been added to the mission, Gallatin was renominated and his appointment was confirmed.[30]

In March 1809, the month after President Jefferson had been unsuccessful in his nomination of William Short as Minister to Russia, President Madison nominated John Quincy Adams for the same post. The Senate passed a resolution by a vote of 17 to 15 that it was inexpedient at that time to appoint a Minister to the Court of Russia and the nomination was returned unconfirmed. In July 1809 President Madison resubmitted the nomination of John Quincy Adams along with a confidential communication on the necessity for the appointment, and the nomination was approved by a vote of 19 to 7. Similarly, upon Madison's nomination of Jonathan Russell as Minister to Sweden, the Senate on July 9, 1813, passed a resolution by a vote of 22 to 14 stating it inexpedient to send a Minister to Sweden at that time,

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[26] U.S. Congress. Senate. Executive Journal, vol. XLVII, pt. 1, 272.

[27] For a full description of action on this nomination. see: Gallagher, Hugh Gregory, Advice and Obstruct—The Role of the United States Senate in Foreign Policy Decisions, New York, Delaware Press, 1969, pp. 122–144.

[28] Salmon, Lucy M., History of the Appointing Power of the President, papers of the American Historical Association, vol. No. 5, New York, G. P. Putnam's Sons, 1886, pp. 28–29.

[29] U.S. Congress, Senate, Executive Journal, June 16, 1813, vol. 2, p. 355.

[30] Ibid., Feb., 8, 1814, p. 470.

and returned the nomination to the President. Six months later, however, the Senate approved the resubmitted nomination.

Although there have been no formal rejections by the whole Senate of nominees in the foreign affairs field in the post-World War II period, a few nominations were confirmed with a sizable vote recorded in opposition or after extensive controversy. The following list identifies, in chronological order, nominations that were confirmed by a recorded vote with more than 10 Senators voting in opposition.[31]

Name and post	Vote	Date
William O'Dwyer: Ambassador to Mexico	42–22	Sept. 18, 1950.
Charles E. Bohlen: Ambassador to Soviet Union	74–13	Mar. 27, 1953.
Paul G. Hoffman: U.S. Representative to U.N. General Assembly	64–22	July 20, 1956.
Scott McLeod: Ambassador to Ireland	60–20	May 9, 1957.
Chester Bowles: Ambassador to India	43–33	Oct. 9, 1957.
Clare Boothe Luce:[32] Ambassador to Brazil	79–11	Apr. 28, 1959.
Julius Holmes: Ambassador to Iran	63–17	May 8, 1961.
Rutherford M. Poats: Deputy Administrator to Agency for International Development	61–24	May 16, 1967.
Carl J. Gilbert: Special Representative for Trade Negotiations	61–30	July 29, 1969.
Paul Warnke: Negotiator for Strategic Arms Limitation Talks and Director of Arms Control and Disarmament Agency.	58–40	Mar. 9, 1977.
Sol Linowitz: Rank of Ambassador during tenure as Personal Representative of President	80–13	Sept. 18, 1979.
Robert Krueger: Ambassador at Large and Coordinator for Mexican Affairs	48–35	Oct. 2, 1979.
Robert E. White: Ambassador to El Salvador	71–17	Mar. 5, 1980.
William P. Clark: Deputy Secretary of State	70–24	Feb. 24, 1981.

[32] After a protracted debate, she declined the post.

Other controversial nominations were approved by voice vote so there is no record of the votes in opposition. For example, Ogden Rogers Reid was confirmed as Ambassador to Israel on June 4, 1959, after his nomination was reported by the Senate Foreign Relations Committee by a vote of 10 to 4. The nomination of Matthew H. McCloskey as Ambassador to Ireland was confirmed by voice vote on July 12, 1962, after having been reported by a committee vote of 9 to 4 and having survived a motion to recommit, which was rejected by a vote of 30 to 62. The nomination of George M. Seignious, II to be Director of the Arms Control and Disarmament Agency was confirmed by voice vote on March 1, 1979, after having been reported by the committee by a 12–2 vote.

On several occasions the Senate has voted on the question of recommitting a nomination to the Foreign Relations Committee, but in each of the instances the motion was defeated and the nominee was confirmed. In addition to the Matthew McCloskey case cited above, examples include Rutherford Poats to be Deputy Administrator of AID, confirmed by a vote of 61–24 on May 16, 1967, after a motion to recommit was rejected 42–43; and Robert Sayre to be Ambassador to Brazil, confirmed on April 27, 1978, after a motion to recommit was tabled by a vote of 61–27.

B. BLOCKING IN COMMITTEE

The small number of rejections by the full Senate represent only a portion of the nominations that are not approved. Indeed, the primary manner in which the Senate effectively rejects a nomination is through inaction of the committee to which it is referred. When the committee does not act, either the President withdraws the nomination or the

[31] Compiled primarily from Calendars of Committee on Foreign Relations.

committee returns it to him at the end of the session in accordance with the Senate rules. Failing Senate action, the nomination lapses after the end of the session.

On the rare occasions when a committee has reported a nomination adversely, the Senate has usually rejected it. This occurred in the case of Neil Andrews who was adversely reported by the Judiciary Committee on July 31, 1950, and subsequently rejected by the Senate. There have been a few cases, however, in which a nominee has been adversely reported by a committee but approved by the Senate. As one example, in 1945 Henry Wallace was confirmed as Secretary of Commerce although the Commerce Committee had reported his nomination unfavorably.

The Foreign Relations Committee does not normally take a recorded vote on a nomination unlikely to be approved. The only instance in recent years when the committee formally voted to reject a nomination occurred on June 5, 1981, when it voted 13–4 to reject the nomination of Ernest Lefever as Assistant Secretary of State for Human Rights and Humanitarian Affairs. The President, at the nominee's request, then withdrew his name from consideration by the full Senate. The committee can also take a recorded vote to postpone indefinitely consideration of a nominee, as it did in the case of G. McMurtrie Godley, nominated to be Assistant Secretary of State for East Asian and Pacific Affairs, on July 11, 1973.

There are numerous examples of nominations in post-World War II years which have not been confirmed although they were not formally rejected. The nomination of Francis Biddle as a delegate to United Nations Economic and Social Council was withdrawn on July 12, 1947, after it was delayed in the Senate for several months by the chairman, Arthur S. Vandenberg. According to one study, Biddle "was regarded as an ardent New Dealer, which he admitted with pride" and a more cautious man was desired by some on the committee "who noted with apprehension the rapid expansion of specialized agencies under the Council." [33]

The nomination of Philip C. Jessup, who had previously been confirmed by the Senate five times but who had been the subject of accusations by Senator Joseph McCarthy, as a delegate to the U.N. General Assembly was submitted September 13, 1951. After public hearings the subcommittee established to consider the nomination voted against confirmation by a vote of 3–2 and the subcommittee chairman moved in the Senate that Jessup's name be left without prejudice before the Foreign Relations Committee. The rest of the delegation, against whom no objection had been raised, was confirmed. Although Jessup's nomination expired with the adjournment of the Senate, he served under a recess appointment as a delegate to the General Assembly, which ended shortly after Congress convened for the second session.[34]

The nomination of Gen. Mark W. Clark as Ambassador to the Vatican was submitted on the last day of the first session of the 82d Congress, October 20, 1951. The nomination caused considerable controversy since the United States had not had formal diplomatic relations with the Vatican since 1867, although Myron Taylor served as

[33] Harris, op. cit., pp. 288–289.
[34] U.S. Congress, Senate, Committee on Foreign Relations, "Legislative History," 82d Cong., p. 65.

the personal representative of the President from 1939 until 1950. The Senate adjourned the same day without acting on the appointment, and the nomination was not resubmitted the next session.

The nomination of John B. Rehm to be a Deputy Special Representative for Trade Negotiations expired after it was referred to the Foreign Relations Committee on October 10, 1968, and no further action was taken. Opposition had been expressed against him on the grounds that he had earlier advocated the improper use of executive agreements.[35]

On April 29, 1974, the nomination of Stanton D. Anderson as Ambassador to Costa Rica was referred to the Foreign Relations Committee. The committee held hearings and considered the nomination three times in executive session but did not make a report. The nominee had been on the staff of the Committee to Reelect the President and testified that he had been involved in a plan to use Federal appointments, grants, and contracts to gain support for President Nixon.[36] On October 15, the administration announced that the nominee had requested that his name be withdrawn, and the committee returned the nomination during recess in the second session of the 93rd Congress. The nomination of Peter M. Flanigan, a former aide to President Nixon, to be Ambassador to Spain was also returned during the recess of that session.[37] In the 96th Congress, the committee did not report fourteen nominations, all of which were withdrawn or returned to the President.

Delay

On occasion, nominations have been purposely delayed by the committee, although not permanently blocked, as a means of emphasizing the views of committee members. The nomination of Henry J. Tasca as Ambassador to Greece, for example, was referred to the committee on September 4, 1969, reported out on December 8, 1969, and approved by a vote of 79–4 on December 19, 1969. Senator Fulbright later made clear in the debate that the delay had not been out of opposition to Mr. Tasca but to prevent a quick confirmation which might be taken as approval of the military regime in Greece and also to hasten the nomination of an Ambassador to Sweden, a post which had been left vacant some time reportedly because of administration disapproval of Swedish policy. Senator Fulbright said in the debate:

> Mr. Tasca has been a distinguished representative of the Foreign Service. His nomination was held up in the committee for some time, and I was responsible for holding it up. There were at least two distinct reasons for that.
>
> One was that I thoroughly disapprove of the cruelty and ruthlessness of the military regime in Greece. * * * I did not wish to be a party to an action which might seem to approve of such a regime by quickly and readily approving this appointment.
>
> That was only a part of the reason. The other side of the coin was that, at the same time the administration had nominated an Ambassador, and a distinguished man, to Greece, it had refused, according to the newspapers, or declined—I do not know exactly what the correct word would be—to name an Ambassador to Sweden. The press reports indicated that this was because of administration disapproval of Swedish policy, particularly with respect to its attitude toward our policy in Vietnam.[38]

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[35] Congressional Record, Oct. 11, 1968, p. S12555.
[36] Congressional Quarterly. Congress and the Nation, vol. IV, p. 1113.
[37] Ibid., p. 1114.
[38] Congressional Record, Dec. 19, 1969, p. S17287.

Senator Fulbright took the occasion to express his views on U.S. policy on Greece, and the meaning of an exchange of Ambassadors:

> I do not advocate that we go in and try to change their regime. That is up to the Greek people. We have had enough of physical intervention, as demonstrated in Vietnam and the Dominican Republic. But we should not give support, such as we are giving to the Greek colonels.
>
> Therefore, although I strongly deplore what we are doing in supporting Greece with military aid, I shall not support the nomination because I do not regard sending an Ambassador, and do not believe it should be regarded, as approval in the least of the regime, and because it is in accord with what I think was the sentiments of the Cranston resolution, which this body approved, not quite unanimously but overwhelmingly.[39]

Although the Tasca nomination involved sending a new ambassador to a government which had already been recognized rather than extending recognition, several Senators in the debate pointed to the Cranston resolution (S. Res. 205, 91st Cong., first sess.) which stated the sense of the Senate—

> * * * that when the United States recognizes a foreign government and exchanges diplomatic representatives with it, this does not of itself imply that the United States approves of the form, ideology, or policy of that foreign government.[40]

Confirmation for one post but rejection for another

Sometimes the committee blocks the nomination of a person for one post but later consents to his appointment to another post. For example, the nomination of Robert Strausz-Hupé as Ambassador to Morocco, made August 5, 1969, was withdrawn by President Nixon on December 22, 1969, after the Foreign Relations Committee did not act on it reportedly because it was felt the views he had expressed in such books as "Protracted Conflict" could be detrimental to U.S. policy in Morocco at a time when negotiations with the Soviet Union might be entering a new era.[41] Mr. Strausz-Hupé was later nominated and confirmed as Ambassador to Ceylon and the Republic of Maldives.

Similarly, the nomination of John C. Hurd, a Texas oil man who reportedly had sought tighter oil import quotas[42] was not approved by the committee as Ambassador to Venezuela, a major oil exporting nation, and his nomination was withdrawn on August 11, 1969. The next year he was nominated and confirmed as Ambassador to the Republic of South Africa.

The nomination of G. McMurtrie Godley to be an Assistant Secretary of State for East Asian and Pacific Affairs was withdrawn in 1973 after the committee had voted to postpone it indefinitely by a vote of 9–7 on July 11, 1973. Mr. Godley was a career Foreign Service Officer who had been Ambassador to Laos during the Vietnam war. The Chairman of the committee, Senator Fulbright, indicated that the reason for the committee's action was the assumption "that if Mr. Godley were to be confirmed as Assistant Secretary of State, such policy recommendations as he might make in the future would reflect his demonstrated inclination and preference for an aggressive U.S.

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[39] Ibid.
[40] S. Res. 205, agreed to Sept. 25, 1969.
[41] Washington Post, Dec. 11, 1969, p. F4; and Dec. 23, 1969, p. A.2; New York Times, Dec. 1969, p. 11.
[42] Washington Star, Aug. 7, 1969, p. A.1, and New York Times, Aug. 8, 1969, p. 5.

role in Southeast Asian affairs.[43] In 1974, however, Godley was confirmed as Ambassador to Lebanon. In 1976, he was nominated as Ambassador to Ethiopia but the nomination was not reported by the committee and was returned to the President upon adjournment.

Senatorial courtesy

The custom of senatorial courtesy does not appear to have been a major factor in appointments in the foreign affairs area although on occasion it has entered into the approval or rejection of nominations. Senatorial courtesy has been defined as—

> * * * the sanction by which a majority of the Senate may require the President to nominate the candidate proposed by the Senator or Senators from the State in which the office is situated, provided they belong to the same party as that of the President. Under the custom, any member of the Senate may block the confirmation of a nomination by stating that the nominee is "personally obnoxious" or offensive to him.[44]

However, usually the custom has been invoked only with respect to Federal offices within a Senator's State:

> The rule of courtesy is ordinarily invoked only against appointments to offices situated within the state of the objecting Senator, such as those of judge, district attorney, marshal, and collector of internal revenue. It has also been invoked at times against nominations of national officers, whose offices are situated in one of the States, by a Senator from the State of residence of the nominee, but this usage is uncommon.[45]

There appear to have been few attempts in past years to invoke Senatorial courtesy in the foreign relations field and at least one such attempt has failed:

> In 1930 Senator Brookhart of Iowa bitterly opposed the appointment of Hanford MacNider of Iowa to be U.S. minister to Canada and stated to the Committee on Foreign Relations that MacNider was "personally obnoxious" to him. The committee, nevertheless, reported the nomination favorably to the Senate, stating that it was the prerogative of the Senate to decide whether such an objection should apply to the appointment of a foreign minister. The Iowa Sentaor had often departed from the Republican ranks in the Senate, and his objection was not sustained.[46]

However, occasionally the objection of a Senator from the nominee's State seems to have been the dominant factor in the withdrawal or expiration of a nomination. In 1954 the nomination of Wright Morrow as an Alternate Representative of the United States to the ninth session of the General Assembly was withdrawn and the nomination of another Texan, James Philip Nash, was submitted and confirmed. Senator Lyndon Johnson told the Senate that prior to Morrow's nomination he had been asked by the State Department to recommend a person from Texas for an alternate delegate and he had recommended Mr. Nash, but a few days later Morrow's name had been submitted without consultation of either Texas Senator. When the Senate Foreign Relations Committee asked his approval of Morrow's nomination, Senator Johnson said, he withheld action until he could ask the State Department what had happened to his recom-

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[43] Letter from Senator Fulbright to Mr. Allen Harris, Acting Chairman, Board of Directors, American Foreign Service Association, July 25, 1973. The letter continued, ". . . when the substantive judgments of the two branches differ and cannot be reconciled, each branch can be expected to use its respective prerogatives to influence policy in the direction which it believes will best serve the national interest. In this instance the committee concluded that Mr. Godley was not the right man for this post at this time and as a consequence, exercised its constitutional prerogative not to confirm him. . . ."

[44] Harris, op. cit. p. 217.

[45] Ibid., pp. 226–227.

[46] Ibid., p. 227.

mendation of Mr. Nash and why another Texas citizen had been nominated without consultation of the Texas Senators. The State Department then informed him that the Morrow nomination was being recalled and the Nash nomination submitted.[47] In a more recent instance, the nomination of Gordon H. Scherer as an Alternate Representative to the 25th session of the General Assembly was not acted upon and returned to the President upon the adjournment of the session although the rest of the U.S. delegation was confirmed. Reportedly, Scherer, a former Representative from Cincinnati, was not approved "because of an old political feud with Senator Stephen Young," of Ohio.[48]

III. Procedure for Foreign Affairs Appointments

This chapter traces the procedures for confirmation from the time a nomination is made until action is completed. Of three principal stages, the first is the decision in the executive branch to nominate a person for a specific post and to submit the nomination to the Senate. The second is the consideration of the nomination by the committee to whom the Executive Clerk sends the nomination after the President submits it. The last stage, if the nomination is favorably reported, is action by the full Senate.

The Senate Rules do not specify committee procedures for nominations, and procedures vary among committees. This study discusses only the procedures of the Senate Foreign Relations Committee, to which most nominations in the foreign affairs field are referred.[49] These include officials of the Department of State and the other principal foreign affairs agencies, the Agency for International Development, the Arms Control and Disarmament Agency, the Peace Corps, and the International Communication Agency. It also includes all ambassadors, ministers, consuls, Foreign Service officers, representatives to most international organizations, and other positions established by law which are within the jurisdiction of the committee.

A. Procedure in the Executive Branch [50]

Possible nominees for a vacant ambassadorial position or senior State Department post are considered by a committee chaired by the Deputy Secretary of State and including representatives from the office of the Director General of the Foreign Service and the Under Secretary for Management. This committee then selects a candidate and forwards its recommendation in the form of an official memorandum to the White House.

The White House may also have candidates for the post in mind, some of whom may be political figures or persons with other kinds of close ties to the President. It considers these possibilities before the President reaches a decision as to his final choice. After the choice is made, the President personally informs each ambassadorial selectee

[47] Congressional Record, 1954, p. 15365.
[48] Teltsch, Kathleen, U.S. Filling of "Public Posts" on Delegation to U.N. Stirs Complaints, New York Times, Oct. 12, 1970.
[49] Significant positions with foreign affairs influence that are referred to other committees include the Special Trade Representative and the Director and Deputy Director of the Central Intelligence Agency.
[50] This section is based on discussions with officials of the Department of State's Bureaus of Congressional Relations and Personnel in January 1982.

by telephone; this is a Reagan policy that was sometimes, but not always followed by his predecessors.

Under the Carter administration a Presidential Advisory Board on Ambassadorial Appointments comprised of some 20 private individuals was created to review the qualifications of possible non-career ambassadorial nominees and help insure "that only qualified individuals are nominated to serve as American ambassadors abroad." President Reagan abolished the Board on March 17, 1981.

Following the telephone call and acceptance by the individual, the Presidential Appointments Staff at the State Department gives each individual a package of forms for security and medical and legal clearances and the investigation process is initiated. The security clearance is handled by the State Department Security Office and the medical clearance by the Department Office of Medical Services. The legal (and financial) clearance is referred to the Office of the Legal Adviser and the Office of Government Ethics [51] in the Office of Personnel and Management. The clearances can take considerable time, especially if the individual has lived overseas—and this is always the case with career Foreign Service officers—or has complex financial affairs.

Under Title II of the Ethics in Government Act of 1978 (Public Law 95–521), a nominee is required to file a financial disclosure statement within 5 days of the nomination. The form is reviewed by the State Department, followed by the Office of Government Ethics, which, in turn, sends an opinion letter with a copy of the form to the committee of referral (Foreign Relations). Any problems relating to conflict of interest, such as how to deal with property, are worked out prior to sending the letter to the committee.

For ambassadorial appointments, after all the clearances are received, a cable is sent to the embassy post of assignment for delivery to the host government. This message requests formal "agrément," a term of French origin denoting approval of a diplomatic representative by the state to which he is to be accredited. By the time the process has reached this stage, the identity of the nominee is often known as a result of intentional or unintentional leaks to the press by individuals privy to the deliberations. Upon receipt of agrément, formal papers are prepared from the Secretary of State to the President, including nomination to the Senate.

Following White House personnel clearances on the formal papers, the White House sends a letter to the Senate Foreign Relations Committee and publicly announces the President's intention to nominate this person. A day or so later, the President formally nominates the individual to the Senate—and it is only at this point that the person becomes the official nominee—and the papers are sent to the Committee on Foreign Relations. Under the terms of § 304(a)(4) of the Foreign Service Act of 1980 (Public Law 96–465), this documentation for ambassadorial nominees must include a "report on the demonstrated competence of [the] nominee to perform the duties of the position in which he or she is to serve."

Such reports are not public documents, since they are protected under the terms of the Privacy Act.

[51] Established by Ethics in Government Act (Public Law 95–521), Sec. 401.

B. PROCEDURE IN THE SENATE FOREIGN RELATIONS COMMITTEE [52]

Although the executive branch may take soundings among various Senators about the acceptability of prospective nominees, the first regular communication the committee receives is a letter of intention to nominate a specified person. While the original purpose of this informal notification may have been to allow time for a nomination to be stopped without embarrassment, currently by the time the letter of intent is sent the nomination is virtually certain to be made. The letter of intent primarily serves the purpose of allowing the committee to begin preparations prior to the formal submission of the nomination.

The committee designates one professional staff member to coordinate the handling of all nominations. Responsibility for preparing questions for each individual nomination, in turn, is assigned to the professional staff member handling the geographical or functional area affected by the nomination.

When the administration sends an unofficial notification of intent to nominate a person, the designated coordinator sends the notification to the staff representatives of the members and professional staff members of the committee. When the formal nomination is submitted, the coordinator advises the staff director and minority staff director, designates the professional staff member who is responsible for the particular nomination, requests information on the nominee from the Congressional Research Service to supplement that supplied by the Department of State, and schedules a hearing.

The professional staff member responsible for a particular nomination prepares a staff memorandum incorporating a list of recent predecessors, a statement of functions and responsibilities of the position, biographic data on the nominee, suggested questions, and any other pertinent information.

Rule 2 of the Rules of the Foreign Relations Committee deals with nominations and basically incorporates three principles: (a) adequate time for consideration and public reaction; (b) open hearings; (c) adequate background information including a security clearance from executive branch investigative agencies and financial information from the nominee. Rule 2 states: [53]

RULE 2—NOMINATIONS

(a) Waiting requirement.—Unless otherwise directed by the Chairman and the Ranking Minority Member, the Committee on Foreign Relations shall not consider any nomination until six days after it has been formally submitted to the Senate.

(b) Public consideration.—Nominees for any post who are invited to appear before the Committee shall be heard in public session unless a majority of the Committee decrees otherwise.

(c) Required data.—No nomination shall be reported to the Senate unless (1) the nominee has been accorded a security clearance on the basis of a thorough investigation by executive branch agencies; (2) in appropriate cases, the nominee has filed a confidential financial statement with the Committee, (3) the Committee has been assured that the nominee does not have any interests which could conflict with the interests of the government in the exercise of the nominee's proposed responsibilities; and (4), for persons nominated to be ambassador or minister, the Committee has received a complete list of any contributions

[52] This section is based on discussions with members of the staff of the Senate Foreign Relations Committee in January 1982. Procedures may vary from time to time.

[53] U.S. Congress. Senate. Committee on Foreign Relations. Rules of the Committee on Foreign Relations. (Adopted Jan. 14, 1981.) Calendar, 97th Congress, Dec. 29, 1981, p. 93.

made by the nominee or members of his immediate family to any Federal election campaign during the year of his or her nomination and for the four preceding years.

The 6-day rule

The 6-day rule was adopted on February 17, 1953, in order to give interested persons an opportunity to learn of the nomination and make their views known.[54] It has been waived to get a nominee to his post by a certain time or, sometimes, when a nomination has been received just before an adjournment. The Senate can approve a nominee quickly, as it did in the case of Edmund Muskie, whose nomination as Secretary of State was referred to the Senate Foreign Relations Committee on May 5, 1980, and was reported by the committee and confirmed by the Senate 2 days later by a vote of 94 to 2, with one voting present.

Some Senators have also felt the rule was necessary because too often nominations are not submitted in time for the Senate to give them adequate consideration.[55]

Security clearances

The rule requiring an FBI investigation of nominees prior to the submission of names to the Senate was adopted on January 14, 1953.[56] To meet this requirement the Secretary of State began including in a letter a statement that the nominee "has been accorded security clearance on the basis of a full field investigation by the Federal Bureau of Investigation."

Subsequently, the rule was changed to substitute for a "full field investigation by the Federal Bureau of Investigation" the requirement for a "security clearance on the basis of a thorough investigation by executive branch agencies."

The question of committee access to the FBI files themselves arose in case of the nomination by President Eisenhower of Charles E. Bohlen as Ambassador to the Soviet Union. After testimony in favor of Mr. Bohlen by Secretary of State Dulles, the committee voted 15 to 0 to recommend confirmation. Nevertheless opposition in the Senate continued. Senator Joseph McCarthy of Wisconsin asserted that President Eisenhower would withdraw the nomination if he examined the FBI file on Bohlen.[57] After Senate debate on the subject, Senator Robert Taft of Ohio suggested that one or two members of the Senate Foreign Relations Committee be designated to examine the file. Senators Taft and Sparkman were appointed a subcommittee of two to review a summary of the FBI file on the nominee and report to the Senate. Following their report that nothing had been found to indicate that Bohlen was a security risk or unfit for the position, the Senate confirmed Mr. Bohlen by a vote of 74 to 13 on March 27, 1953.[58]

The issue arose again in 1973 when a staff member was authorized to review the security files of Helmut Sonnenfeldt.[59]

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[54] U.S. Congress. Senate. Committee on Foreign Relations. Background Information on the Committee on Foreign Relations, 1982 edition, p. 14, and Legislative History, 83d Cong., p. 63.

[55] Congressional Record, Oct. 14, 1970, p. S18044.

[56] U.S. Congress. Senate. Committee on Foreign Relations. Background Information on the Committee on Foreign Relations, 1982 edition, p. 14.

[57] Harris, The Advice and Consent of the Senate, p. 296.

[58] U.S. Congress. Senate. Committee on Foreign Relations. Background Information, 1968 edition, p. 32.

[59] U.S. Congress. Senate. Committee on Foreign Relations. Background Information, 1982 edition, p. 14.

In 1981, the committee adopted a policy of requesting access for any Senator on the committee who wished to review such file.

Other background information from executive branch

In 1959, the chairman of the committee, Senator Fulbright, requested that the State Department regularly furnish information about nominees in addition to the clearances and the routine biographic information. In a letter to Secretary of State Dulles of February 5, 1959, he wrote:

> It has seemed to me that if the committee is properly to exercise its advice and consent function in connection with ambassadorial appointments, it is important that it have not only the usual biographic data and statement regarding security clearances, but that it also receive for its confidential use certain other information which the President must consider prior to filling one of these important posts. Frankly, I do not know precisely what form this information may take. I would assume, however, that prior to submitting such appointments, the Department and the President must have information before them of the kind which would normally be utilized by a corporation—or perhaps a college president—prior to filling important positions. With respect to ambassadorial appointments, for example, I would think the authorities concerned would want to know of the candidate's language ability, his ability as an administrator, his ability to make friends, the nature and depth of his interest in foreign affairs generally, as well as specifically in the country to which he is being sent, the interest which may be brought to bear on him in his post, and similar matters.
>
> Because the President and the Senate share the power to appoint ambassadors, it seems to me that when the Senate confirms a nomination it should have before it the same kind of information which the Executive had in making the nomination. I hope, therefore, that you will be able to supply me with background information on candidates of a more nearly complete nature than has been available to us in the past.[60]

Acting Secretary of State Herter replied on February 20, 1959, that—

> * * * with the President's consent the Department of State is quite prepared to institute a practice of sending you a confidential letter, subsequent to the submission of a diplomatic nomination to the Senate, setting forth the qualifications of the prospective appointee, which the Department took into account when it made its recommendation to the President.[61]

The Foreign Service Act of 1980 subsequently provided that for each nomination for a chief of mission, the President send the committee "a report on the demonstrated competence of that nominee to perform the duties of the position in which he or she is to serve." [62]

Political contributions

A perennial concern of the committee has been the use of ambassadorial appointments to reward major political contributors. Congress has passed a series of legislative measures aimed at reducing the practice.

In 1973 a provision in law required each nominee for the post of ambassador or minister to submit a statement of all political contributions made by him or his immediate family during the 4 years prior to the nomination.[63] In 1974 Congress added the requirement that these statements be published in the Congressional Record.[64] In 1975 legis-

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[60] U.S. Congress. Senate. Committee on Foreign Relations. Administration of the Department of State. Committee print, 86th Cong., 2d Sess., p. 205.
[61] Ibid. 206.
[62] Section 304(a)(2), Public Law 96–465.
[63] Section 6 of Department of State Appropriations Authorization Act of 1973 (Public Law 93–126).
[64] Public Law 93–475.

lation stated the sense of Congress that "No individual should be accorded the position of United States ambassador to a foreign country primarily because of financial contributions to political campaigns." [65] In 1980 the provision requiring reports of contributions was extended to all chiefs of mission, ambassadors at large, and ministers. The provision states:

> Each individual nominated by the President to be a chief of mission, ambassador at large, or minister shall, at the time of his nomination, file with the Committee on Foreign Relations of the Senate and the Speaker of the House of Representatives a report of contributions made by such person and by members of his or her immediate family during the period beginning on the first day of the fourth calendar year preceding the calendar year of his nomination and ending on the date of the nomination. The report shall be verified by the oath of the nominee, taken before any officer authorized to administer oaths. The chairman of the Committee on Foreign Relations of the Senate shall have each such report printed in the Congressional Record. As used in this paragraph, the term "contribution" has the same meaning given such term by section 301(8) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431 (8)), and the term "immediate family" means a spouse of the nominee, and any child, parent, grandparent, brother, or sister of the nominee and the spouses of any of them.[66]

The requirement for a statement of political contributions followed publicity during the Watergate period over methods of raising funds for the 1972 reelection campaign of President Nixon. Particularly controversial was a $300,000 contribution by Dr. Ruth Lewis Farkas, who in 1973 was nominated as Ambassador to Luxembourg and confirmed by the Senate on March 26, 1973.[67] The subject of her contributions also was discussed in hearings relating to President Nixon's impeachment. Presidential Legal Counsel Herbert Kalmbach testified that Dr. Farkas had expressed interest in giving $250,000 to President Nixon's campaign in return for an appointment as Ambassador to Costa Rica.[68]

Other information from nominee

Thus the committee receives a political contributions statement required by law as well as the financial disclosure report required of all nominees by the Ethics in Government Act of 1978. In addition, the Foreign Relations Committee requires each nominee to submit additional information in response to a questionnaire. One part of the questionnaire asks for information that may be released publicly, such as basic biographical data including education, employment, language ability, speeches and publications. Another part, which is retained by the committee on a confidential basis, asks for data on financial and legal matters. The committee furnishes to each nominee a copy of the statute relating to potential conflicts of interest, and requires an affidavit. A copy of the current questionnaire is attached in the appendix.

The committee's questionnaire has varied from time to time. In 1977 it required the nominee to answer the question, "Do you accept the National Commitments Resolution . . . passed by the Senate in 1969," and furnished a copy of the resolution. In addition, in 1973 the Senate Democratic Policy Committee instructed every standing committee to require from every nominee a promise to appear before congressional committees upon request.

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[65] Sec. 104 of Public Law 94–141 (22 U.S.C. 2688).
[66] Section 304(b)(2) of Foreign Service Act of 1980 (Public Law 96–465).
[67] U.S. Congress. Senate. Committee on Foreign Relations. Nominations. Hearing, Mar. 13, 1973, p. 44.
[68] U.S. Congress. House. Judiciary Committee. Hearings, July 17, 1974, Book III, pp. 649–50.

Courtesy calls

Sometimes nominees pay a courtesy call on Senators who are members of the committee handling the nomination. The call takes place after the nomination has been formally submitted, but before the hearings start. Some objections have been raised to this practice, and it is discussed further in the chapter on options.

Hearings

Perhaps the major method of obtaining information on which the committee might make an independent judgment is through hearings. In recent years the committee has aimed at having public hearings on all important nominations for ambassadorial and ministerial posts and executive branch offices. Because of the growing number of nominees, the committee has adopted a policy of not holding hearings on nominations for temporary or part-time positions such as delegates to the U.N. General Assembly and members of advisory commissions, unless a Member specifically indicates a desire to have hearings on a nomination. The committee may also dispense with hearings on nominees who have been previously confirmed for another position.

The practice before 1953 was to hold hearings only when someone requested to be heard on a nomination. The public hearing on January 13, 1945, on Dean Acheson's nomination as Secretary was the first ever held on a Secretary of State.[69] In 1953 the committee began the practice of examining the nominees for all important positions.

After that the number of hearings increased and has remained high. During the 91st Congress the committee held hearings on 143 nominees; in the 95th Congress it held hearings on 211, and in the 96th Congress on 146. During the single year of 1981, the first session of the 97th Congress, it held hearings on 136 nominations.

As specified in the committee rules, the hearings are open unless a majority of the committee decides otherwise. In 1957 the committee adopted a motion "that from now on all nominees for ambassadorial and ministerial posts be heard in open session unless a majority of the committee decrees otherwise." [70] Executive (closed) hearings have become rather rare, and are now usually in addition to open hearings, rather than in place of them, as the following table shows.

EXECUTIVE HEARINGS ON NOMINATIONS HELD BY THE FOREIGN RELATIONS COMMITTEE [71]

	In executive session only	In both executive and open session
Congress:		
91st	7	2
92d	2	
93d	4	4
94th	1	
95th		2
96th		2
97th, 1st session		

[69] U.S. Congress. Senate. Committee on Foreign Relations. Legislative History, 81st Congress, p. 4.
[70] U.S. Congress. Senate. Committee on Foreign Relations. Background Information, 1982 edition, p. 15.
[71] Compiled from committee calendars.

The nominees on whom executive as well as public hearings were held during 1980 and 1981 were Ralph Earle to be Director of the Arms Control and Disarmament Agency, April 22, 1980; James W. Spain, a Career Minister in the Foreign Service, to be Ambassador to Turkey, February 5, 1980; Alexander Haig to be Secretary of State, January 12, 1981; and Ernest Lefever, to be Assistant Secretary of State for Human Rights and Humanitarian Affairs, June 4, 1981. All except Lefever were confirmed.

The committee usually goes into executive hearings in order to discuss classified or sensitive material, and to forestall nominees from using the open sessions as a justification for not answering questions. Chairman Charles Percy told Alexander Haig:

> Although executive privilege can be invoked only by Presidents themselves, whenever the subject matter impinges on national security and you feel that you cannot properly respond to a question in an open, public session, then we can arrange a closed session so that you can give to the committee members a full reply.[72]

The Foreign Relations Committee sometimes permits other Members of the Senate to sit in on hearings and to propose questions to the witness.[73] Senators from the nominee's home State frequently introduce a nominee.

The length of the hearings varies according to the importance of the post and questions on the appointment. Frequently hearings for ambassadorial posts last less than an hour, and on occasion several nominees are examined in a single hearing. On the other hand the hearings may go on for several days for major or controversial appointments. In 1981 hearings on Alexander Haig continued for 6 days and on Ernest Lefever for 4 days. The length of the hearing is not necessarily determined by the significance of the position. Hearings on the nomination of Henry Kissinger as Secretary of State in 1973 lasted 4 days, Cyrus Vance in 1977, 1 day, and on Senator Edmund Muskie in 1980, a member of the committee, less than 3 hours.

The questions asked by Senators at the hearings are aimed both at putting on public record the experience and qualifications of the nominee and at exchanging views on policy matters with which the nominee is likely to be dealing in the future. The emphasis of the questions varies according to the post and the nominee. The focus in the hearing of a career diplomat may be on the nominee's previous post; in the case of a wealthy political nominee it may be on any possible conflict of interest or political contributions.

The discussion of the country to which a diplomatic nominee is being sent affords members of the committee an opportunity to express their views and to probe the knowledge and views of the nominee. At the same time, caution is exercised so that the nominee, especially for an ambassadorial post, does not have to make any comment which might jeopardize future relations with the foreign country where

[72] U.S. Congress. Senate. Committee on Foreign Relations. Hearings on Nomination of Alexander M. Haig, Jr. to be Secretary of State, part I, p. 3.
[73] Ibid., p. 7.

he will serve. Senator Fulbright, for example, told William Leonhart on April 15, 1969, in hearings on his nomination as Ambassador to Yugoslavia:

> We could talk about Yugoslavia all morning, but I think it may not be very useful to put you in a position of publicly talking about a place you are going to. * * *[74]

It seems to be acknowledged that agreement with the committee or the Senate on the foreign policies to be pursued is not a prerequisite for confirmation although, as has been noted, confirmation has occasionally been delayed or withheld because the committee did not believe the policies represented by the nominee were suitable for the post to which he was being sent.

In a hearing on the nomination of Nicholas deB. Katzenbach to be Under Secretary of State, as is frequently the custom the late Senator Everett F. Dirksen, as the Senator from Mr. Katzenbach's State of Illinois, spoke in his favor, saying, "I vouch for him without reservation." When the chairman of the committee, Senator Fulbright, said, "That does not mean you necessarily agree with everything he thinks about foreign relations," Senator Dirksen said, "Oh, no. I disagree violently with him and I have had occasion to do that only recently as the history books will indicate."[75]

Committee decision

After hearings, the committee meets in executive session and decides whether to report the nomination favorably. The committee may report the nomination, defer it, take no action, or reject it. As mentioned in the section on practice, the committee reports most nominations favorably. It seldom formally rejects a nomination. It more often takes no action, thus effectively defeating the nomination.

The Foreign Relations Committee, like other committees, does not ordinarily issue a published report on nominations hearings, though on controversial nominations it may do so to provide a record and to accommodate a committee member who wishes to explain or clarify the actions taken.

As the following table indicates, the Foreign Relations has issued written reports more frequently in the past few years. During the 96th Congress in 1979 and 1980 the committee issued reports on seven nominations. During 1981, the first session of the 97th Congress, the committee issued reports on seven nominations.[76]

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[74] U.S. Congress. Senate Committee on Foreign Relations. Hearings on the Nominations of * * * William Leonhart. To Be Ambassador to Yugoslavia * * *. Apr. 15, 1969, p. 17.

[75] U.S. Congress. Senate. Committee on Foreign Relations. 89th Cong., 2d sess., Hearings on the Nominations of Nicholas deB. Katzenbach To Be Under Secretary of State * * *, Sept. 27, 1966, p. 3.

[76] During the 96th Congress the committee issued executive reports on the nomination of Sol M. Linowitz; Robert E. White; Ralph Earle II; Jack Hood Vaughn; Henry Precht; Robert Gershenson; and John A. Gronouski. During 1981 the committee issued executive reports on the nominations of William P. Clark; Thomas Pauken, Myer Rashish, Chester A. Crocker, James L. Malone, John Holdridge, and Jose Manuel Casanova.

NUMBER OF SENATE EXECUTIVE REPORTS FILED ON INDIVIDUAL NOMINATIONS, BY COMMITTEE, 93D THROUGH 96TH CONGRESSES

Committee	Congress			
	93d	94th	95th	96th
Agriculture	0	0	2	0
Armed Services	3	1	2	0
Banking	1	0	0	1
Commerce	0	1	0	0
Aeronautical and Space Sciences	0	0		
Energy and Natural Resources	0	2	3	0
Environment and Public Works	0	0	0	0
Finance	0	0	0	0
Foreign Relations	3	1	3	7
Governmental Affairs	0	0	1	6
District of Columbia	0	1		
Post Office and Civil Service	0	0		
Judiciary	0	1	3	0
Labor and Human Resources	0	0	0	0
Rules and Administration	2	7	1	1
Veterans' Affairs	1	0	0	0
Select Indian Affairs			0	0
Select Intelligence		0	2	0
Select Small Business			1	0
Total	10	14	18	15

Source: Updated from Parris, Judith. Consideration of Presidential Nominees by Senate Committee, p. 19. Derived from committee calendars and Library of Congress files of Senate executive reports. Some executive reports cover more than 1 nominee.

C. PROCEDURE IN THE SENATE

After the nomination is reported by the committee, it is placed on the Senate calendar. The Senate leadership decides when to bring the nomination to a vote, and how much debate to allow. Most nominations are approved by voice vote without any debate, but others are subjected to Senate debate. The time allotted for the nomination of William P. Clark as Deputy Secretary of State in 1981 was 3 hours; the nomination of Thomas W. Pauken to be Director of ACTION was allotted 2 hours. Occasionally a Senator places a "hold" on Senate floor action, requesting the leadership not to call up a nomination. As an example, in 1981 Senator Jesse Helms reportedly delayed Senate action for a short time on the nominations of Chester Crocker and Myer Rashish until each answered more than 100 questions that the Senator submitted to them during the hearings.[77]

Senate procedures are governed by Senate Rule 31. (See appendix for text.) Rule 31 requires that the final question on every nomination shall be, "Will the Senate advise and consent to this nomination?"

Like the rules of the Foreign Relations Committee, Rule 31 demonstrates concern for adequate time by requiring that unless there is unanimous consent the question cannot be put on the day that the Senate receives the nomination or the day the committee reports. Sometimes, however, unanimous consent is obtained to proceed with the consideration of a nomination immediately upon receiving the committee report. The Senate rule similarly demonstrates concern for openness by requiring that all business shall be in open session unless the Senate determines that a particular nomination should be considered in closed executive session.

[77] Tonelson, Alan. Battling Modern Diplomacy. Foreign Service Journal. October 1981, p. 22.

There is opportunity for Senate reconsideration of its approval of a nomination before the nominee is sworn in. Under paragraph 3 of Senate rule XXXI, the Senate may move for a reconsideration of a nomination on the same day on which a vote was taken or on either of the next 2 days of actual executive session. If a notification of the confirmation or rejection has been sent to the President before that time, the motion to reconsider is to be accompanied by a motion to request the President to return the notification.[78] Paragraph 4 of rule XXXI provides that the Secretary of the Senate shall not return nominations confirmed or rejected to the President until the time limit for making a motion to reconsider has expired or while a motion to reconsider is pending unless the Senate orders otherwise. In practice, after a nomination has been approved, a motion is usually made and passed by unanimous consent that the President be notified immediately of the approval.

A ruling of the Supreme Court has upheld the view that once the Senate has notified the President of its consent and the nominee has been installed, the time for any Senate reconsideration of its approval has passed.[79] The Supreme Court overruled proceedings instituted by the Senate after it had unsuccessfully attempted to get President Hoover to return the resolution notifying him of the Senate's consent to certain nominations to the Federal Power Commission, invoking the Senate rule permitting reconsideration within the next 2 days of actual executive session. The nominees had meanwhile taken the oath of office and the President said, "I cannot admit the power in the Senate to encroach upon the executive function by removal of a duly appointed executive officer under the guise of reconsideration of his nomination." [80]

In 1939 President Roosevelt rejected a similar demand on the part of the Senate and was not challenged.[81]

Nominations which are submitted to the Senate and not approved during the session of Congress in which they are submitted expire unless they are resubmitted in the next session. According to rule XXXI of the Senate, nominations which have not been confirmed or rejected by the end of a session lapse with the adjournment or recess of the Senate for more than 30 days and are not considered by the Senate unless they are resubmitted.

Then-Chairman of the Foreign Relations Committee Fulbright objected to the routine practice of notifying the President immediately of Senate confirmation of a nomination on the grounds that it made it impossible for motions to reconsider to be filed within a 3-day period as contemplated by the rules. He said the practice transferred the papers from jurisdiction of the Senate to the President and it would be an act of grace on the President's part to return them. In his view, this was a small example of the Senate giving away some of its authority to the President for no good reason (tidy calendar for example) and against a sound public policy (public notice).[82]

[78] Senate rule XXX is attached as app. VI.
[79] *United States* v. *Smith*, 286 U.S. 6 (1932).
[80] Annotated Constitution, op. cit., p. 505.
[81] Ibid.
[82] Letter from Senator Fulbright to Senator Robert Byrd, May 2, 1975.

Nominations that are submitted to the Senate and not approved during the session of Congress in which they are submitted expire unless they are resubmitted in the next session. According to rule 31 of the Senate, nominations which have not been confirmed or rejected lapse with the adjournment or recess of the Senate for more than 30 days and are not considered by the Senate unless they are resubmitted. This rule is frequently waived at the end of the first session. In the 97th Congress the Majority Leader, Senator Howard Baker, asked unanimous consent that Rule 31 be suspended with respect to nominations received during the first session, so that their status would not be affected by adjournment, with six exceptions. The exceptions included one in the foreign affairs field, the nomination of Maurice H. Stans to be a member of the Board of Directors of the Overseas Private Investment Corporation.[83] In 1975 Mr. Stans, Secretary of Commerce during President Nixon's first term, had pleaded guilty to misdemeanors of violating campaign fund laws in connection with his role as finance chairman of the Committee to Reelect the President.[84] Thus the nomination of Mr. Stans was returned to the President but other nominations pending in the foreign affairs field remained on the calendar for the second session.

D. CRITERIA

In recent years, there appear to have been three primary considerations for confirmation of executive branch nominees to foreign affairs positions. During the confirmation hearings for Secretary of State Alexander Haig in January 1981, Senator Claiborne Pell stated these criteria as follows:

(1) *professional background, as relating to character, judgment and relevant experience;*

(2) *views on specific foreign policy issues; and*

(3) *attitude and plans regarding cooperation with the Congress as reflected in the past.* [emphasis added] [85]

Questions of professional background and relevant experience are sometimes raised when the President names non-career appointees, especially personal friends and/or longtime associates who may appear to lack substantive knowledge of the issues on which they would exercise policy judgment. On the other hand, personal character or integrity is not often publicly questioned, perhaps because it is assumed that the nominee's background has already been scrutinized before the President's decision to nominate. Such questions do, however, on occasion arise, and in fact, were important factors in the committee's failure to confirm Ernest Lefever as Assistant Secretary of State for Human Rights and Humanitarian Affairs in 1981. Moreover, there also have been occasions on which the biographical data and other information on a close associate of the President have apparently not been given the scrutiny they should presumably receive in the White House or the State Department because of the fact that the nominee is known to enjoy a special relationship with the chief executive.

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[83] Congressional Record, Dec. 16, 1981; p. S15632.

[84] Nuechterlein, James A. Watergate: Toward a revisionist view. Commentary, August 1979, p. 41.

[85] U.S. Senate. Committee on Foreign Relations. Nomination of Alexander M. Haig, Jr. Hearings, January 9, 10, 12, 13, 14, 15, 1981. Part 1. Washington, U.S. Government Printing Office, 1981, p. 4.

It is true that character and judgment are not always easy to discern either through review of official documentation or during the brief hours scheduled for confirmation hearings, often the only time the nominee and the members of the committee are exposed to each other. In addition, a presidential appointee may appear to lack appropriate experience relating to his prospective new responsibilities and there is no way that the committee can ascertain how the nominee would perform if confirmed.

A recent example of a nominee who did not appear to have appropriate credentials for a senior foreign affairs appointment, yet subsequently surprised initial critics by his ability to learn "on the job" was former California State Supreme Court Justice and Reagan confidant William P. Clark, whose appointment as Deputy Secretary of State caused noticeable concern among both Republicans and Democrats on the Foreign Relations Committee. Skeptics subsequently praised his performance, however, and were supportive of his selection as the President's National Security Adviser. Somewhat ironically, perhaps, the new National Security Adviser does not require formal Senate confirmation, so the Senate had no opportunity to vote on how diligent a "student" Judge Clark was during his year at the State Department.

As for the views of the nominee on specific foreign policy issues, practice has been to question the nominee but not necessarily to penalize him or her if these views ran contrary to those of members of the committee. Rather, the committee usually prefers to permit the President the latitude of choosing his own team, provided the character and integrity of the nominee are beyond question.

On the other hand, policy views sometimes seem to be the primary consideration of the committee in its decision not to report a nomination. In 1971 and 1972, for example, five nominations to the General Advisory Committee of the U.S. Arms Control and Disarmament Agency were returned to the President, and three of them, Earle G. Wheeler, John A. McCone, and Robert Ellsworth, were returned twice.[86] The main reason appears to have been that the committee felt the nominees did not have an arms-control orientation.

As for the attitude of the nominee regarding cooperation with the Congress as reflected by past performance, it is not always possible to ascertain such attitudes if the nominee has not previously held public office requiring testimony before congressional committees. In addition, such attitudes and plans can change with circumstances, as for example, when the party of the President and that of the majority in the Senate coincide and when they do not. Nevertheless, the committee normally does expect nominees to state their willingness to be cooperative in the future.

There is a recent notable example of an official who had previously held a senior foreign affairs position that did not require Senate confirmation, and who was subsequently nominated to hold concurrently a position that did. That individual was Henry Kissinger, who served as President Nixon's Assistant for National Security Affairs from 1970–73. The Foreign Relations Committee found the situation extremely complex because under the new arrangement, Dr. Kissinger was to serve as both National Security Assistant *and* Secretary of

[86] Legislative History of the Committee on Foreign Relations, 92d Congress, p. 148.

State. The committee voiced concern that the National Security Assistant role might "be used, by the device of asserting executive privilege, to deny access to information deemed essential by the Senate in the formulation of foreign policy." [87] But Dr. Kissinger assured the committee that he intended to cooperate fully and "to limit any claims of executive privilege to such narrowly defined areas as personal conversations between the Secretary and the President and actual NSC discussions." [88]

Possible means of establishing criteria will be discussed below in the chapter on options for change.

IV. The Problem of Volume

The number of nominations annually sent to the Senate for confirmation has risen steadily since the founding of the Nation, and has increased especially in the years since World War II. (See table 1 and figures 1A and 1B.) When the Journal of the Executive Proceedings of the Senate began to print categorized tables of nominations with the 73d Congress in 1933, a total of 9,094 nominations had been submitted for the 2 years 1933 and 1934. For 1949, the first year of the 81st Congress, the total was 55,311. Two decades later, in 1969, the total number of nominations received was 73,159. In 1979, the total was 86,212 even though the Postal Reorganization Act of 1970 had ended the requirement for Senate confirmation of postmasters. In the single year 1981, the first session of the 97th Congress, there were 106,616 nominations submitted. The large increase in 1981 was primarily caused by the Defense Officer Personnel Management Act (Public Law 96–513), which required resubmission of appointments of all military officers. While more than 90 percent of the nominations are for the appointment and promotion of military officers, as table 1 shows, since 1961 there have been 3,000 to 5,000 civilian nominations every year except 1976.

TABLE 1.—NOMINATIONS SUBMITTED TO THE SENATE,[1] 1947–81

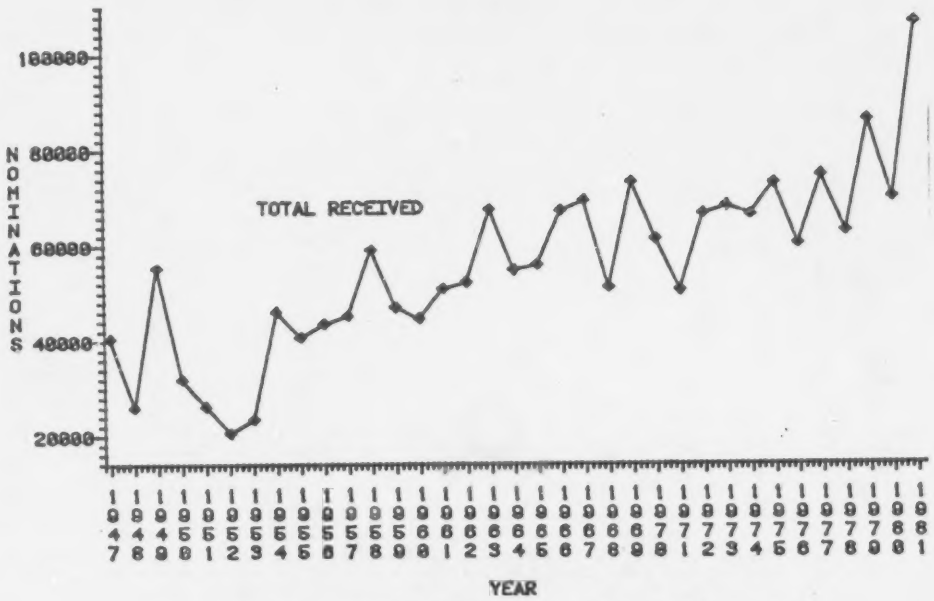
Year	Total received	Civilian other than postmasters	Year	Total received	Civilian other than postmasters
1947	40,557	1,506	1965	55,765	5,098
1948	26,084	3,006	1966	67,254	4,290
1949	55,311	2,64[illegible]	1967	69,254	4,647
1950	31,955	1,650	1968	50,977	3,398
195[illegible]	26,284	1,521	1969	73,159	4,005
1952	20,636	900	1970	61,305	3,427
1953	23,542	1,539	1971	50,499	3,406
1954	45,916	1,945	1972	66,554	3,677
1955	40,686	1,729	1973	68,080	3,247
1956	43,487	2,938	1974	66,304	3,541
1957	45,114	2,958	1975	73,039	3,441
1958	59,079	2,484	1976	60,263	2,691
1959	46,934	2,561	1977	74,659	4,972
1960	44,542	2,598	1978	62,850	3,010
1961	50,770	3,460	1979	86,212	4,384
1962	52,079	3,418	1980	69,929	3,934
1963	67,456	3,012	1981	106,616	5,037
1964	54,734	3,416			

[1] Compiled from: Congressional Record, Daily Digest. Résumé of Congressional Action published at end of each session.

[87] U.S. Senate. Committee on Foreign Relations. Nomination of Henry Kissinger [to be Secretary of State]. Sept. 19, 1973. Executive Rept. No. 93–15, p. 6.
[88] *Ibid.*

FIGURE 1A

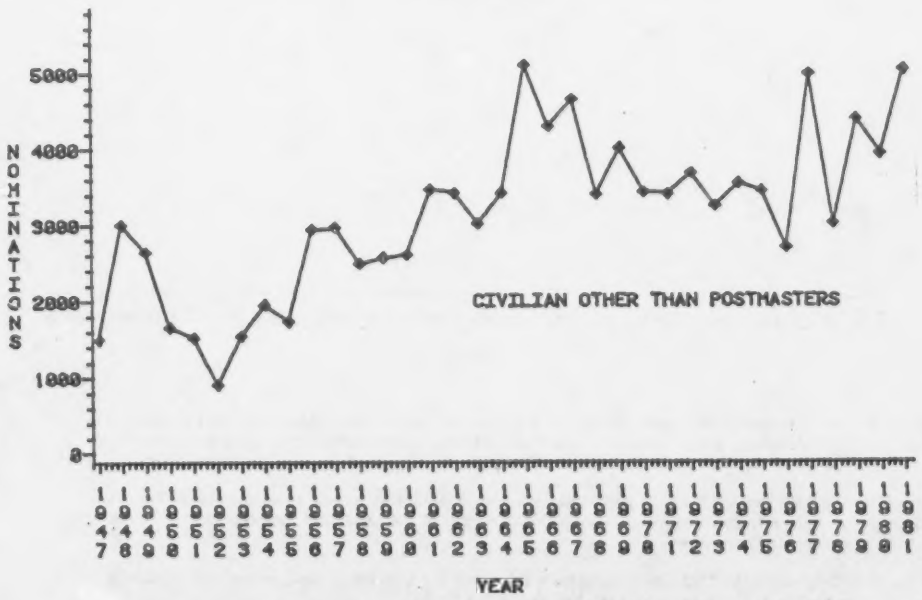
NOMINATIONS SUBMITTED TO THE SENATE 1947–1981



Compiled from: Congressional Record, Daily Digest. Resume of Congressional Action published at end of each session.

FIGURE 1B

NOMINATIONS SUBMITTED TO THE SENATE 1947–1981



Compiled from: Congressional Record, Daily Digest. Resume of Congressional Action published at end of each session.

The volume has similarly increased in foreign affairs, the annual number now being more than double what it was 30 years ago. (See table 2 and figure 2.) In the 81st, 82d, and 83d Congresses the Foreign Relations Committee handled approximately 1,000 nominations each Congress. Since the 85th Congress beginning in 1957 the committee has handled more than 2,500 nominations each Congress. In the year of 1981 alone 2,364 nominations were referred to the Foreign Relations Committee.

TABLE 2.—NOMINATIONS REFERRED TO THE SENATE FOREIGN RELATIONS COMMITTEE, 1949–81 [1]

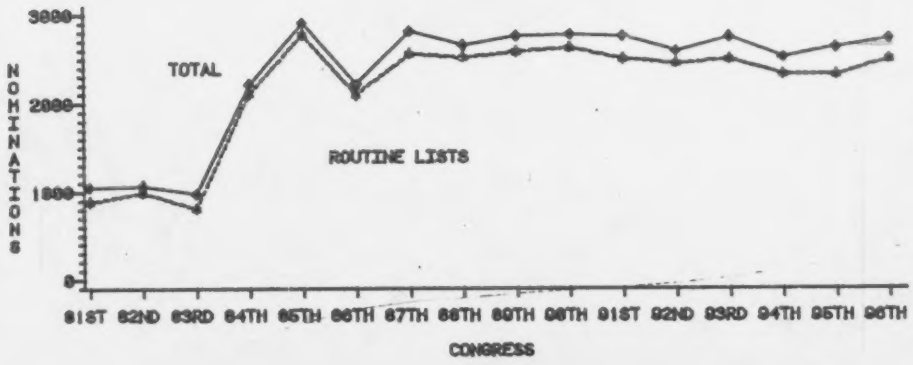
Congress	Total	Routine lists	Individual
81st (1949–50)	1,049	886	163
82d (1951–52)	1,061	986	75
83d (1953–54)	973	805	168
84th (1955–56)	2,215	2,108	107
85th (1957–58)	2,906	2,772	134
86th (1959–60)	2,218	2,097	121
87th (1961–62)	2,813	2,554	259
88th (1963–64)	2,654	2,514	140
89th (1965–66)	[2] 2,759	2,578	181
90th (1967–68)	2,773	2,622	151
91st (1969–70)	2,754	2,498	256
92d (1971–72)	2,586	2,446	140
93d (1973–74)	2,744	2,492	252
94th (1975–76)	2,517	2,326	191
95th (1977–78)	2,628	2,320	308
96th (1979–80)	2,728	2,494	234
97th, 1st session (1981)	2,356	2,184	172

[1] Figures for the 81st through the 84th Congresses are for those nominations approved by the committee, and taken from U.S. Congress. Senate. Committee on Foreign Relations, 1968 edition. Background Information on the Committee on Foreign Relations. U.S. Senate. Figures for the 90th through 97th Congresses are compiled from the Calendars of the Senate Foreign Relations Committees or the annual legislative activities reports of the committee, and represent the total number of nominations considered.

[2] In the 89th Congress, 1,483 nominations for U.S. Information Agency Foreign Service officers were submitted and subsequently withdrawn when legislation to create a new Foreign Service officer corps for the USIA did not pass. These have not been included in this table.

FIGURE 2

NOMINATIONS REFERRED TO THE SENATE FOREIGN RELATIONS COMMITTEE
1949–1980



Figures for the 81st through the 84th Congresses are for those nominations approved by the committee are taken from U.S. Congress. Senate. Committee on Foreign Relations, 1968 edition. Background Information on the Committee on Foreign Relations. United States Senate.

Figures for the 90th through the 97th Congresses are compiled from the Calendars of the Senate Foreign Relations Committees or the annual legislative activities reports of the committee, and represent the total number of nominations considered.

In the 89th Congress 1,483 USIA nominations were submitted and then withdrawn because FSIA legislation did not pass that year. These have not been included in the totals.

The vast majority of these are Foreign Service Officers submitted in routine lists, with the large number in 1981 primarily resulting from the conversion of personnel in the foreign affairs agencies and the Departments of Agriculture and Commerce under the Foreign Service Act of 1980.

A better indication of the heavy workload of the Foreign Relations Committee is the large number of individual nominations it receives. (See table 3 and figure 3.) In two of the past four Congresses the Foreign Relations Committee has received more individual nominations than any other committee, and there are only three other committees (Commerce, Judiciary and Labor and Human Resources) in the same general range.

As might be expected there are more individual nominations in the Congress following presidential election. In the 95th Congress, the first Congress during the Carter Administration, the committee received 308 individual nominations; in the 96th Congress it received 234. In 1981, the first year of the Reagan Administration, the Foreign Relations Committee received 172 nominations in addition to the routine lists.

TABLE 3.—NUMBER OF INDIVIDUAL NOMINATIONS REFERRED TO THE SENATE'S COMMITTEES, 93D THROUGH 96TH CONGRESSES [1]

Committee	Congress			
	93d	94th	95th	96th
Agriculture	13	13	27	14
Armed Services	57	38	37	36
Banking	55	78	57	73
Commerce	111	99	136	85
Aeronautical and Space Sciences	0	2	----	----
Energy and Natural Resources	26	23	44	27
Environment and Public Works	19	12	39	21
Finance	31	22	33	37
Foreign Relations	256	183	309	234
Governmental Affairs	3	4	25	53
District of Columbia	12	5	----	----
Post Office and Civil Service	5	6	----	----
Judiciary	272	146	276	272
Labor and Human Resources	109	118	171	182
Rules and Administration	5	9	5	5
Veterans' Affairs	1	0	2	2
Select Indian Affairs	----	----	1	1
Select Intelligence	----	1	3	0
Select Small Business	----	----	2	1
Total	975	759	1,167	1,043

[1] Passage of S. Res. 4 at the outset of the 95th Congress resulted in a realinement and renaming of Senate committees. The Committees on Aeronautical and Space Sciences, District of Columbia, and Post Office and Civil Service were abolished and their jurisdictions transferred, respectively, to the Committees on Commerce (renamed Commerce, Science, and Transportation) and Governmental Affairs (formerly Government Operations). The Committee on Agriculture and Forestry was renamed Agriculture, Nutrition, and Forestry, and the Select Committee on Nutrition and Human Needs was consolidated into its jurisdiction as of the end of 1977. Interior became Energy and Natural Resources; Public Works became Environment and Public Works; Labor and Public Welfare became Human Resources (renamed Labor and Human Resources at the beginning of the 96th Congress). See Parris, Judith H. The Senate Reorganizes Its Committees, 1977. Political Science Quarterly, v. 94, summer 1979: 319–337.

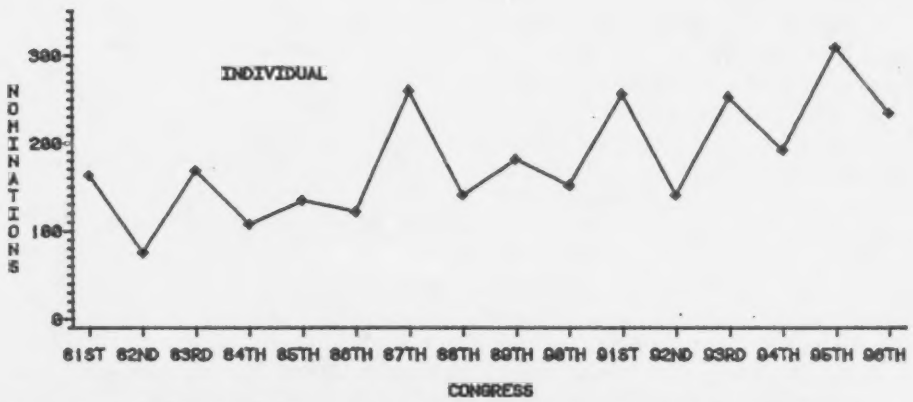
The Select Committee on Indian Affairs was created at the beginning of the 95th Congress by S. Res. 4. The Select Committee on Intelligence was created by S. Res. 400, 94th Congress. The Select Committee on Small Business received authorizing jurisdiction over and responsibility for considering nominations to the Small Business Administration by passage of S. Res. 109 of the 94th Congress.

This table does not include routine lists of commissions and promotions in the military services, the Foreign Service, the Coast Guard, the National Oceanic and Atmospheric Administration, and the Public Health Service, all of which are subject to confirmation by the Senate.

Sources: Compiled from committee calendars. Updated from Congressional Research Service Report No. 80-35-GOV, "Consideration of Presidential Nominees by Senate Committees," by Judith H. Parris, Jan. 21, 1980, p. 12.

FIGURE 8

NOMINATIONS REFERRED TO THE SENATE FOREIGN RELATIONS COMMITTEE 1949–1980



Figures for the 81st through the 84th Congresses are for those nominations approved by the committee are taken from U.S. Congress. Senate. Committee on Foreign Relations, 1968 edition. Background information on the Committee on Foreign Relations. United States Senate.

Figures for the 90th through the 97th Congresses are compiled from the Calendars of the Senate Foreign Relations Committees or the annual legislative activities reports of the committee, and represent the total number of nominations considered.

In the 89th Congress 1,483 USIA nominations were submitted and then withdrawn because FSIA legislation did not pass that year. These have not been included in the totals.

Still another measure of the workload is the number of hearings devoted to nominations. (See table 4.)

TABLE 4.—NUMBER [1] AND PERCENTAGE OF INDIVIDUAL NOMINATIONS ON WHICH SENATE COMMITTEES HELD PUBLIC HEARINGS, 93D THROUGH 96TH CONGRESSES

Committee	Congress							
	93d		94th		95th		96th	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Agriculture	3	23	7	54	15	56	13	93
Armed Services	47	82	31	82	37	100	36	100
Banking	47	85	30	38	45	79	33	45
Commerce	66	59	60	61	86	63	49	57
Aeronautical and Space Sciences	0	----	2	100	----	----	----	----
Energy and Natural Resources	26	100	23	100	42	95	26	96
Environment and Public Works	(2)	(2)	4	33	31	79	7	33
Finance	22	71	13	59	73	70	(2)	(2)
Foreign Relations	143	56	108	59	211	68	146	62
Governmental Affairs	3	100	3	75	18	72	49	92
District of Columbia	12	100	4	80	----	----	----	----
Post Office and Civil Service	3	60	4	67	----	----	----	----
Judiciary	81	30	64	44	89	32	219	80
Labor and Human Resources	34	31	48	41	67	39	25	13
Rules and Administration	3	60	8	89	5	100	4	80
Veterans' Affairs	1	100	0	----	2	100	2	100
Select Indian Affairs	----	----	----	----	1	100	1	100
Select Intelligence	----	----	1	100	3	100	----	----
Select Small Business	----	----	----	----	2	100	1	100
Total	[3] 491	50	410	54	677	58	----	----

[1] Sources: Updated from Parris, Judith. Consideration of Presidential Nominees by Senate Committees, p. 12. Derived from committee calendars. Hearings on separate simultaneous nominations of the same individual counted twice. Joint hearings counted twice—once in each committee.

[2] Public Works Committee's calendar for the 93d Congress does not indicate how many hearings it held on nominations. Finance Committee calendar for the 96th Congress not available at time of compilation.

The Foreign Relations Committee has held significantly larger numbers of hearings on nominations than any other committee in three of the last four Congresses. The committee held hearings on 143 nominations in the 93d Congress, 108 in the 94th Congress, and 211 in the 95th Congress. In the 96th Congress the Foreign Relations Committee held hearings on 146 nominations. For the first time in this period the number of hearings held by Foreign Relations was exceeded by that held by the Judiciary Committee which held 219 hearings as a result of an act creating numerous new judgeships. Since the Federal judgeships are lifetime positions, the Judiciary Committee is not faced with holding hearings for each post every few years. In 1981 the Foreign Relations Committee held hearings on 136 nominations; out of 214 meetings 68 were devoted at least in part to hearings on nominations.[89]

The heavy volume of nominations and the resulting workload raises several questions. It is possible for the Committee to give adequate consideration to such a large number of nominees? What constitutes adequate consideration? If time permits only perfunctory deliberation, is any purpose served? Should the number of nominations required to be submitted to the Senate be reduced, and if so, which ones should be eliminated?

Further analysis of the nominations is necessary in considering these questions as they relate to the foreign affairs field. For discussion purposes, the nominations are divided into three categories:

(A) Confirmations required by the Constitution.
Ambassadors, other Public Ministers, and Consuls; routine lists of foreign service officers.
(B) Confirmations to offices required by legislation.

A. CONFIRMATIONS REQUIRED BY THE CONSTITUTION

The great majority of nominations considered by the Senate in the foreign affairs field are constitutionally mandated by the requirement that it confirm "Ambassadors, other public Ministers and Consuls." These include both chiefs of mission (by far the smaller category) and routine Foreign Service appointment and promotion lists. The latter are far more numerous, but, because of their usually routine nature, normally require less time and energy.

Ambassadors, other public Ministers, and Consuls

This category is comprised for the most part of U.S. Ambassadors to other governments, or what are officially referred to as chiefs of mission. The United States currently has embassy-level relations with 147 countries, although some ambassadorial posts—such as those in Afghanistan, Libya, and Laos—are not filled because of policy differences with the governments to which an ambassador would be accredited. A recent State Department publication indicated that as of September 1, 1981, there were 134 American Embassies, and that American Ambassadors were accredited to an additional 13 countries where no physical embassy existed.[90]

The number of ambassadorial (chief of mission) nominations submitted to the Senate during the 90th through 96th Congresses (1967–

[89] U.S. Congress. Senate. Committee on Foreign Relations. Legislative Calendar, Dec. 29, 1981.
[90] U.S. Department of State. Key officers of Foreign Service posts. (Revised September 1981.) Washington, U.S. Government Printing Office, 1981, p. viii.

80) has ranged from a high of 112 during the 95th to a low of 50 during the 92d. In 1981, the first year of the Reagan Administration, there were 72 nominations for ambassadors to specific countries.

Routine Lists of Foreign Service Officers

The U.S. Constitution has been interpreted by Congress in such legislation as the Foreign Service Act of 1980 to require Senate confirmation for all appointments and promotions of Foreign Service officers. As noted above, the vast majority of these are routine lists and do not require the attention of the committee. It might be asked why formal confirmation could not be dispensed with, given the press of more important business.

In fact, the committee follows procedures that are designed to permit its members—and, by implication, the public—to have an input into the confirmation of the individuals on these lists by providing the lists to each member and also publishing them in the Congressional Record. A similar policy is followed for military promotion lists by the Senate Armed Services Committee. After a minimum of 6 days (as opposed to seven in the Armed Services Committee), the lists are considered en bloc at a meeting of the Foreign Relations Committee. If no member raises objections to any of the names on the list, the Committee recommends their confirmation by the Senate.

There have been some occasions in the recent past when individual names included in routine nomination or promotion lists have been questioned by members of the Foreign Relations Committee. One such occasion occurred in 1976 when an official of the American Foreign Service Association (AFSA)—acting on his own behalf, and not for AFSA—protested the promotion of five officers. He claimed these promotions were actually rewards for cooperating with the management of the Department of State to the detriment of the Foreign Service. Following a hearing by the Committee, these allegations were dismissed and the list was subsequently approved without deleting the promotions that had been criticized.

In 1977, Senator George McGovern, then chairman of the Foreign Relations International Organization Subcommittee, which had jurisdiction over Foreign Service promotions, briefly held up a promotion list because he wished further information on the alleged role of one of the promotees in U.S. policy toward Greece during the Nixon administration.

Most recently, in March 1982, President Reagan nominated Max Friedersdorf, a departing White House official responsible for congressional liaison but without previous foreign affairs experience, to admission to the Foreign Service in order to assign him as the U.S. consul general in Bermuda (the senior U.S. official in the British colony). As a result, Senator Claiborne Pell, the only former Foreign Service officer serving in the Senate, asked that a Foreign Relations Committee hearing be scheduled to look into the question. The committee approved the list, minus Friedersdorf, whose nomination it also reported out favorably, but separately. The majority report on the nomination stated:

> **The members of the committee emphasized that the Friedersdorf nomination is an exception to the well established practice of reserving consular appointments for career members of the Diplomatic Service. The Committee believes**

that the Friedersdorf nomination should not be considered a precedent and that only in rare instances should noncareer appointments even be considered for such posts.[91]

During the March 16 debate in the Senate on the nomination, Senator Pell indicated that only two noncareer consuls general had been appointed since the founding of the modern Foreign Service in 1924, and both had had prior State Department experience. Acknowledging that the appointment would probably be approved despite his opposition, he voiced the hope that the Administration would "make no further political appointments to posts of this kind." [92]

Thus the consideration of an otherwise routine list gave Senator Pell and other members of the committee an opportunity to question publicly such appointments in the future, on the grounds that they appeared to violate the principle of filling overseas posts below the ambassadorial level with only career Foreign Service officers.

It therefore might appear that continuing to require Foreign Relations Committee review of routine Foreign Service officer nomination and promotion lists not only does not add significantly to the committee's legislative responsibilities, but also provides the option of reviewing such presidential actions in some detail, should there be any questions as to the inclusion of individuals about whom questions conceivably might be raised.

B. CONFIRMATIONS IN THE FOREIGN AFFAIRS FIELD REQUIRED BY LEGISLATION

In addition to establishing the confirmation requirement for "Ambassadors, other public Ministers, and Consuls," the Constitution provides for the Senate confirmation of all other officers of the United States whose positions have been established by law, unless Congress vests the appointment of the officer exclusively in the President or the head of a Department. Thus Congress in legislation creating agencies determines how many officers in each are subject to the confirmation requirement. Such legislation usually provides for most employees to be appointed by the President or an agency without requiring Senate confirmation.

Over the years a considerable body of legislation has been enacted requiring specific appointments in the foreign affairs field to be made "by the President, by and with the advice and consent of the Senate." In addition to the Ambassadors and Foreign Service officers already discussed, 51 officers in foreign affairs agencies, 40 members of advisory committees and boards of directors, plus approximately 40 representatives or delegates to international organizations require confirmation.

In some cases, nominations are submitted to the Senate even though not required by law. Such exceptions have developed in practice, primarily to allow the appointee to hold the rank of Ambassador. Examples include the U.S. Representative to the Council of the Organization of American States and the U.S. Representative to the Organization for Economic Cooperation and Development.

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[91] U.S. Congress. Senate. Committee on Foreign Relations. Nomination of Max L. Friedersdorf: report together with minority views. Washington, U.S. Government Printing Office, 1982. (97th Cong., 2nd sess. Senate. Executive Rept. No. 97–52, p. 2.)

[92] Congressional Record. Daily Edition. Mar. 16, 1982, p. S2138–39.

Following is a brief summary of the appointments in the foreign affairs field specifically required by legislation to be made by the President by and with the advice and consent of the Senate. Excerpts from and citations to the legislation are contained in Appendix I.

The appointments have been divided into two broad categories. The first category lists officials in Federal agencies dealing with foreign affairs or members of related advisory commissions. The second consists of representatives of the United States in international organizations.

1. POSTS IN FEDERAL AGENCIES

Department of State

Of the various Federal agencies under the purview of the Foreign Relations Committee the Department of State has the largest number of officials—26—required to receive senatorial confirmation under legislative mandate.

Legislation requires confirmation of the following officials:[93]

Secretary of State.
Deputy Secretary of State.
Under Secretary of State for Political Affairs.
Under Secretary of State for Economic Affairs.
Under Secretary of State for Management.
Under Secretary for Security Assistance, Science and Technology.
Thirteen Assistant Secretaries of State[94] plus Assistant Secretary for Oceans and International Environmental and Scientific Affairs and Assistant Secretary of State for International Narcotics Matters.
Director General of the Foreign Service.
Inspector General of the Department of State and the Foreign Service.
United States Coordinator for Refugee Affairs and Ambassador at Large while serving in this position.
Counselor.
Legal Adviser.

Foreign assistance agencies

The Foreign Assistance Act of 1961 originally required that 12 officers primarily responsible for administering economic and technical assistance be appointed by and with the advice and consent of the Senate without specifying their distribution. The Reorganization

[93] See Appendix II for a list of officials who have held these posts since 1945.

[94] The Assistant Secretary of State positions now are allocated as follows:
Assistant Secretary, Economic and Business Affairs.
Assistant Secretary, European Affairs.
Assistant Secretary, International Organization Affairs.
Assistant Secretary, Congressional Relations.
Assistant Secretary, Near Eastern and South Asian Affairs.
Assistant Secretary, Inter-American Affairs.
Assistant Secretary, East Asian and Pacific Affairs.
Assistant Secretary, African Affairs.
Assistant Secretary, Administration.
Assistant Secretary, Public Affairs.
Assistant Secretary for Oceans and International Environmental and Scientific Affairs.
Assistant Secretary of State for Consular Affairs.
Assistant Secretary of State for Human Rights and Humanitarian Affairs.
Assistant Secretary of State for International Narcotics Matters.
The position of Assistant Secretary for Educational and Cultural Affairs was transferred to the International Communication Agency with the establishment of that agency.

Plan of 1979 abolished one such position. At present the 11 confirmed positions in the Agency for International Development are allotted as follows:

Administrator.
Deputy Administrator.
Four regional Assistant Administrators: Bureau for Near East; Bureau for Africa; Bureau for Asia; and Bureau for Latin America and the Caribbean.
Five Assistant Administrators: Bureau for External Relations; Bureau for Food and Voluntary Agencies; Bureau for Private Enterprise; Bureau for Program and Policy Coordination; and Bureau for Science and Technology.

The 1969 amendments to the Foreign Assistance Act created the Overseas Private Investment Corporation and required that six members of the Board of Directors and the President and Executive Vice President be appointed by and with the advice and consent of the Senate. Later the number of Directors requiring confirmation was raised to eight.

The 1969 amendments also created the Inter-American Social Development Institute, now the Inter-American Foundation, and required that the seven members of its Board of Director were to be appointed with Senate confirmation.

Under the legislation establishing the Peace Corps, the Director and Deputy Director require Senate confirmation.

U.S. Arms Control and Disarmament Agency

In the U.S. Arms Control and Disarmament Agency, the Director, Deputy Director, and four Assistant Directors are Presidential appointments requiring Senate confirmation. The Arms Control and Disarmament Act did not specify the jurisdictions of the Assistant Directors but at present they are at the head of the following Bureaus:

Multilateral Affairs; Nuclear and Weapons Control; Verification and Intelligence; and Strategic Programs.

In addition, the President may appoint a General Advisory Committee on Arms Control and Disarmament, with up to 15 members who must be confirmed.

In 1977 Congress added a requirement for confirmation of a Special Representative for Arms Control and Disarmament Negotiations.

International Communication Agency

In the International Communication Agency, the Director and Deputy and four Associate Directors are required to be confirmed. One of the Associate Directors is specified to be the Associate Director for Education and Cultural Affairs, a position formerly in the Department of State, and one the Associate Director for Broadcasting. The two others are not specified in law, but at present one is Associate Director for Management and one is Associate Director for Programs.

Under the Foreign Service Act of 1980, Foreign Service information officers are to be appointed and promoted in the same manner as Foreign Service officers in the Department of State. The five members of the U.S. Advisory Commission on Public Diplomacy are also Presidential appointees requiring Senate confirmation.

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2. U.S. REPRESENTATIVES IN INTERNATIONAL ORGANIZATIONS

Another category of appointments which legislation sometimes requires be made by the President by and with the advice and consent of the Senate consists of persons appointed to represent the United States in international organizations.

For the United Nations, the posts requiring confirmation are: (1) The principal U.S. representative; (2) his deputy; (3) the deputy U.S. representative to the Security Council; (4) the U.S. representative to the Economic and Social Council; (5) the U.S. representative to the Trusteeship Council; (6) the five delegates to the General Assembly; (7) their alternates; (8) the representative to the European Office of the United Nations and other international organizations; and, (9) the senior members of the Military Staff Committee of the United Nations.

Except for the principal representative and the five delegates, the amended United Nations Participation Act does not specify precisely how many representatives require confirmation. It states that:

> The President, by and with the advice and consent of the Senate, shall appoint additional persons with appropriate titles, rank, and status to represent the United States in the principal organs of the United Nations, including bodies that may be created by the United Nations with respect to nuclear energy or disarmament.[88]

The intention that this involve four additional posts requiring Senate confirmation is clarified by the legislative history of the act. The original United Nations Participation Act of 1945 called for a U.S. representative and a deputy representative to the Security Council, and only these two persons, except for the President or the Secretary of State, had the authority to represent the United States in the Security Council. The act was amended in 1949 to provide an additional deputy representative who could represent the United States in any organ of the United Nations. Thus, three representatives could represent the United States in any of the United Nations bodies. In addition the 1949 amendments provided that the President in certain cases could designate (1) any officer of the Department of State whose appointment was subject to confirmation to temporarily represent the United Nations in the Security Council in the absence of the regular representative, or (2) without the advice and consent of the Senate, to designate any officer temporarily under certain circumstances to represent the United States in the Economic and Social Council and the Trusteeship Council, although the regular representatives to those two councils required confirmation.

The United Nations Participation Act was amended to its present form in 1965 to permit still greater flexibility in assignments but the confirmation requirements remained basically the same. At that time statutory authority was added for the position of a U.S. representative to the European Office of the U.N. and a confirmation requirement established for a post which was at that time held by a man with the "personal rank of ambassador."

Of the specialized agencies and the International Atomic Energy Agency, some but not all have confirmation requirements for U.S. representatives. For UNESCO, the five representatives to the General

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[88] U.N. Participation Act of 1945 (Public Law 79–264), as amended, sec. 2(b), see app. I.

Conference and their alternates must be confirmed. For the World Health Organization, the three delegates and their alternates to the World Health Assembly need not be confirmed, but whenever the United States becomes entitled to designate a person to serve on the Executive Board, that person must be confirmed. For the International Atomic Energy Agency, the representative and deputy representative, who represent the United States on the Governing Board, and the representative to the General Conference of the Agency and his alternates require confirmation.

The four other specialized agencies having confirmation requirements are in the financial field and share six officials who must be confirmed. Under the Bretton Woods Agreements Act, the U.S. Governor of the International Monetary Fund, who also serves as a Governor of the International Bank for Reconstruction and Development, an alternate U.S. Governor, an Executive Director of the Bank and his alternate, and an Executive Director of the Fund and his alternate are to be appointed by the President by and with the advice and consent of the Senate. Four of these officials, the Governor and Executive Director of the Bank and their alternates, also serve as Governor, Executive Director, and their alternates for the International Finance Corporation and the International Development Association.

There are no statutory confirmation requirements for the remaining specialized agencies:

World Meteorological Organization.
International Telecommunication Union.
International Labor Organization.
International Civil Aviation Organization.
Intergovernmental Maritime Consultative Organization.
Food and Agriculture Organization.[96]
Universal Postal Union.
World Intellectual Property Organization.

For the regional international organizations, a statutory requirement that the permanent representative of the United States to the North Atlantic Treaty Organization be appointed by the President with the advice and consent of the Senate was included in the Mutual Security Act of 1954, as amended. There is no similar requirement for the representative to the Organization for Economic Cooperation and Development (OECD) but the nomination has been customarily submitted to the Senate. Similarly, the nomination of the U.S. representative to the Organization of American States is customarily submitted to the Senate for its advice and consent although there is no specific statutory requirement.

Three regional financial institutions have statutory confirmation requirements. In the case of both the Inter-American Development Bank and the Asian Development Bank, the U.S. Governor and his alternate and the U.S. Executive Director require Senate confirmation. Legislation authorizing U.S. participation in the African Development Bank requires confirmation of the U.S. Governor and his alternate.

[96] The representative to the Food and Agriculture Organization is customarily accorded the rank of Minister and thus confirmed.

V. Foreign Affairs Appointments Made Without Senate Confirmation

The previous chapter dealt with the problem of the volume of appointments in the foreign relations field requiring Senate confirmation. The other side of the question concerns appointments which are made in the foreign affairs field without submitting them to the Senate. Are there appointments being made in the foreign affairs field by the executive branch alone which ought to be confirmed by the Senate?

The framers of the Constitution anticipated that there would be positions to which appointments could be made without the advice and consent of the Senate in the clause, "but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments."[97] Nevertheless, the language, "and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law," seems clear that appointments to high offices established by law, unless exempted, were intended to be included in the group to be made with the advice and consent of the Senate. "Ambassadors, other public Ministers, and Consuls" are specifically named as requiring confirmation in article II, section II.

In practice, while many routine appointments are submitted, some appointments to positions which have considerable influence on foreign policy are made without being referred to the Senate. Current examples would include the appointment by the President of an Assistant for National Security Affairs, and the influential post of Director of the Bureau of Politico-Military Affairs at the State Department, who is appointed by the Secretary of State.

Throughout U.S. history the unilateral appointment of high level diplomatic or foreign policy personnel by the President without reference to the Senate has been a problem. The practice dates back to the administration of President Washington, who sent Gouverneur Morris as a "private agent" to Great Britain to pave the way for establishing normal diplomatic relations. The appointment by President Franklin D. Roosevelt of Myron C. Taylor as personal representative of the President to the Vatican in 1939, and the work of Col. Edward M. House under President Wilson and Harry Hopkins under President Franklin D. Roosevelt are other examples.

Henry M. Wriston, who has made probably the most comprehensive study of the question in his work "Executive Agents in American Foreign Relations,"[98] summarized the growth of the practice in an article in Foreign Affairs in 1960. Noting that Washington had sent Gouverneur Morris as a "private agent," bearing no commission and only a letter on "the authority and credit" of which he was to converse, Wriston said:

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[97] Art. II, Sec. II.
[98] Wriston, Henry Merritt, Executive Agents in American Foreign Relations, op. cit.

This employment of Morris was a very thin edge of the wedge. But in dealing with the Barbary States, a title—"consul"—was conferred on an agent and a regular commission was issued to him. Moreover, full power to negotiate a treaty was granted, with the extraordinary privilege of naming a substitute; yet no nomination went to the Senate. Here were two very significant additional precedents, the use of the title of a constitutional officer, and the initiation of a treaty by an agent without the advice and consent of the Senate. For a century and a quarter thereafter precedents accumulated. The number of special missions has now run into the thousands.[98]

Among the various kinds of occasions for which special envoys have been employed which Wriston pointed out are: (1) To represent the United States at ceremonial occasions or international expositions, fairs, and athletic contests; (2) to represent the United States in a whole geographic area rather than a single nation (such as the mission of John Foster Dulles to Central America in 1917 and in more recent years the missions of Milton Eisenhower and Nelson Rockefeller to Latin America, and Eric Johnston to the Middle East); (3) to look at matters concerning several agencies and departments from the point of view of the United States rather than a single agency; (4) to attend international conferences; (5) to deal with an unrecognized nation (such as Arthur Dean in negotiations on the Korean armistice); and (6) to negotiate on technical matters for which a high degree of expertise is needed.

In the same article Mr. Wriston called attention to the continued congressional protest of the practice:

Along the historical path accumulating instances did not go unchallenged. A long series of congressional debates discussed this use of the President's power; some were of a high order of excellence. Occasionally, Presidents retreated; at other times they asserted their power more vigorously. For example, Woodrow Wilson specifically directed the Secretary of State to disobey a law which he regarded as legislative trespass upon his executive authority in this matter. Ultimately the Congress acquiesced and for over 25 years now, while there has been some sharp sniping at individuals, there has been no such classic discussion as marked earlier eras.[100]

The legal bases for the use of personal representatives, Mr. Wriston states, were that such a person was not an officer of the Government and that his duties were temporary. However, he also pointed out, the contention that "a man performing official duties, with officials to help him, is not an officer skirts the borders of legal fiction," and "the word 'temporary' has more flexibility than the ordinary use of the word would indicate," occasionally continuing for some years. The difference between a Presidential agent and an officer he likened to the distinction between an executive agreement and a treaty, in each case the less formal method sometimes used to avoid complications which might arise if a treaty or nomination were submitted to the Senate. He added:

In this century there has more often been a legislative challenge to the use of executive agreements—the "Bricker amendment" is a conspicuous example—than to the employment of personal representative. The use of the one means or the other—both with executive agreements and personal representatives—is to be found in the motives or convenience of the President. Neither is always clear from the record.[101]

[98] Wriston, Henry M., "The Special Envoy," Foreign Affairs, vol. 38, January 1960, p. 220.
[100] Ibid., p. 221.
[101] Ibid., p. 222.

More troublesome, perhaps, were instances in which appointments were made to sensitive diplomatic negotiations without Senate approval. In 1970 President Nixon named former Ambassador David E. K. Bruce to head the U.S. delegation to the Paris negotiations on Vietnam, without submitting this appoinment to the Senate. Diplomatic nuances possibly were involved in the decision not to seek Senate confirmation as the United States did not formally recognize or have diplomatic relations with two parties in the talks, North Vietnam and the Vietcong. Similarly, President Nixon appointed William J. Porter to replace Bruce, again without reference to the Senate.

It may be that the Vietnam negotiations were atypical. Certainly other negotiation positions since then have been subject to Senate approval, including the SALT, Mutual and Balanced Force Reduction (MBFR) and Intermediate Nuclear Force (INF, formerly Theater Force) negotiators. This may also reflect both the more activist role which Congress as whole has played in foreign affairs since the Vietnam war, and tightened legislative requirements.

As in the case of executive agreements, there are in all likelihood many instances in which the use of Presidential agents might not be objectionable to any members of the Senate, as when a personal representative is sent to attend a wedding or a funeral of a foreign official. At the same time, there may be some areas in which the sharing of foreign policy power would be improved by the employment of formally confirmed officials rather than informal Presidential agents. The negotiation of multilateral treaties which must be approved by the Senate or of controversial settlements which require congressional support for implementation are examples and will be discussed in more detail later.

A. APPOINTMENTS WHICH LEGISLATION EXEMPTS FROM SENATE CONFIRMATION

Not all appointments in the foreign affairs field which are made without the consent of the Senate are necessarily in the same category as Presidential agents. Some appointments have been exempted from the confirmation process by legislation just as the bulk of Government employees have been exempted from it by civil service or other legislation. When legislation permits appointments to be made without the advice and consent of the Senate, Congress is by law vesting the appointment of such inferior officers as they think proper in the President alone or in the heads of departments, as permitted by the Constitution.

In the case of foreign affairs legislation, the exemption from Senate confirmation is perhaps most explicit in such cases as section 2(d) of the United Nations Participation Act. While requiring that certain representatives of the United States in the United Nations have Senate approval, section 2(d) also authorizes the President to appoint "such other persons as he may deem necessary to represent the United States in organs and agencies of the United Nations." In addition, it specifies two cases in which the appointment may be made "without the advice and consent of the Senate," although the appointments in this case must be of persons who have been previously confirmed. The clause states:

The President may, without the advice and consent of the Senate, designate any officer of the Department of State, whose appointment is subject to confirmation by the Senate, to act, without additional compensation, as the representative of the United States in either the Economic and Social Council or the Trusteeship Council: (1) at any specified session thereof where the position is vacant or in the absence or disability of the regular representative; or (2) in connection with a specified subject matter at any specified session of either such Council in lieu of the regular representative.[102]

More frequently the legislative exemptions from the confirmation requirement are not so specific as to say that an appointment may be made without the advice and consent of the Senate. However, legislation accomplishes the same purpose when it specifies that certain appointments are to be made by the President and omits the phrase "by and with the advice and consent of the Senate," or when it specifies some other method of appointment.

The legislation establishing the Overseas Private Investment Corporation provides for a Board of Directors of which the nongovernmental Directors and the President are subject to Senate confirmation but the others are to be Government officials designated by the President. Similarly, although the Executive Vice President of the Corporation is to be appointed by the President by and with the advice and consent of the Senate, the legislation states "other officers, attorneys, employees, and agents shall be selected and appointed by the Corporation." [103]

In still other cases, when legislation prescribes that certain officials in an agency must be appointed with Senate confirmation, the implication is, even if it is not specifically stated, that other officials need not be confirmed. For example, since various legislation concerning the State Department requires that appointment to offices be approved by the Senate, it seems to be assumed that appointment of other officials in the Department need not be confirmed. For example, the appointments of the Director of Intelligence and Research and Director of Politico-Military Affairs are not confirmed although as heads of bureaus they have responsibilities and status comparable to an Assistant Secretary.

In the above cases there is a legislative basis for making some appointments with the advice and consent of the Senate and others without such Senate confirmation. Of concern is whether there are any important appointments made by the executive branch alone without legislative authorization, explicit or implied.

B. APPOINTMENTS NOT EXEMPTED FROM THE CONFIRMATION REQUIREMENT BY LEGISLATION

Of appointments in the foreign affairs field which are made without the advice and consent of the Senate, and which have not been expressly exempted from the confirmation requirement by legislation, there are three categories which will be discussed here: (1) U.S. delegates to international conferences and representatives in international negotiations; (2) persons appointed "with the personal rank" of ambassador or minister; and (3) non-statutory but influential positions whose status Congress may wish to reconsider.

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[102] Public Law 79–264, sec. 2(d), as amended.

[103] Sec. 233(d) of the Foreign Assistance Act of 1961 (Public Law 87–195), as amended by sec. 105 of the Foreign Assistance Act of 1969 (Public Law 91–175).

(1) U.S. delegates to international conferences and representatives in international negotiations

One of the biggest changes in the methods of diplomacy which has taken place since the Constitution was framed is the increase in the use of multilateral conferences and international organizations. While the traditional role of an ambassador in the bilateral relations of the United States continues, an increasing number of the most important negotiations takes place outside the bilateral framework. International organizations in which the United States participates, of which there were none when the Constitution was drafted, have gradually increased in number since the last half of the 19th century and have multiplied rapidly since the Second World War. In addition, ad hoc multilateral conferences to facilitate negotiation on problems involving more than two states have become a regular instead of an occasional method of conducting diplomacy.

In some cases legislation or practice has maintained a Senate role in the appointment of the persons conducting this new form of diplomacy, the U.S. representatives to these multilateral negotiations. As already mentioned, the United Nations and several of the specialized agencies in the United Nations system have some statutory confirmation requirements. In the case of other specialized agencies, however, there is no additional participation legislation since ratification of the treaty establishing the organization has been considered sufficient authority for participation. Consequently, confirmation requirements have never been set. Such specialized agencies are the World Meteorological Organization, the International Telecommunication Union, the International Civil Aviation Organization, and the Intergovernmental Maritime Consultative Organization. In the case of the International Labor Organization and the Food and Agriculture Organization there is legislation authorizing U.S. participation, but it does not provide for Senate confirmation of the U.S. representatives.

Similarly, for some of the many other regional and other international organizations (NATO, the Inter-American Development Bank, and the Asian Development Bank) there is legislation requiring Senate confirmation of the representatives. In at least two other cases, OECD and the OAS, the nominations of U.S. representatives are sent to the Senate even in the absence of such legislation. Often, however, appointments of persons to represent the United States in international negotiations and meetings are made without Senate confirmation. While in some cases the persons appointed may have been confirmed by the Senate in some other capacity, this is not necessarily the case.

This situation raises the question whether the Senate should approve legislation that would require confirmation in cases alluded to above. One alternative could be to consider participation legislation for all the international organizations for which it does not now exist or to devise some other method to require Senate confirmation of the chief U.S. delegate to all or at least all major international organizations. This could appear to fill a present void by establishing a channel of communication between the Senate and the U.S. delegation to international organizations.

Similarly, if Senate confirmation of delegates to major international conferences were required, it might help strengthen the Senate's role in regard to multilateral treaties. When treaties have been negotiated by a large number of states, there is a certain additional pressure on the Senate to approve the treaty as is, without making any reservations or adding amendments which might necessitate renegotiation. Since the renegotiation of a multilateral treaty involves many nations, there is much reluctance to do anything that might require it, so the Senate is often in effect faced with accepting the treaty as presented or negating the painstaking and time-consuming effort of negotiators from, conceivably, up to a hundred or more countries.

(2) *Persons appointed "with the personal rank of ambassador or minister"*

The problem of persons given the "personal" rank of ambassador or minister without the advice and consent of the Senate frequently overlaps with the problem discussed above, since the President sometimes appoints delegates to international negotiations and conferences with the "personal rank" of ambassador or minister.

The practice of conferring a personal rank of ambassador or minister on a Presidential representative dates back only to the late 19th century although, as has been pointed out, Presidential representatives had been used long before that and occasionally they had been given commissions or the title of "consul." Wriston summarizes the origin of the practice in this way:

> Thus, it is manifest that all the Presidents connected with the framing of the Constitution or the institution of the new government followed a policy which clearly shows they did not regard themselves authorized to appoint executive agents and give them the rank and title of regular diplomatic officers. * * *
>
> The factor which seems to have led the President to alter the practice of never conferring rank and title upon an executive agent was the enactment by which Congress provided for the grade of ambassador. * * *
>
> The United States had accepted the classification of diplomatic officers as established by the Congress of Vienna in 1815, and amended by the Congress of Aix-la-Chapelle in 1818. The second of the rules adopted at Vienna was to the effect that "ambassadors, legates, or nuncios only have the representative character." It referred to the theory that an ambassador represented the person of his sovereign. The practical advantage growing out of this character—the privilege of demanding an interview with the head of the state—had largely evaporated. There remained, as so often happens when the substance of privilege is destroyed, certain ceremonial rights. Standing in the stead of the chief of his state, the ambassador is regarded as the equal of the head of the state to which he is accredited, and is to receive honors similar to those which would be accorded his sovereign.
>
> Possessing representatives of such exalted dignity, the United States was in a position to participate in certain ceremonial functions from which it had hitherto usually abstained. Before the grade of ambassador was employed, the President could not send a personal representative who would be accorded the position of dignity or precedence at a coronation or royal marriage befitting the representative of an important power. Rather than take rank upon the fringes of the assembly, at a lower table, and after the representatives of lesser powers, the United States had simply abstained, for the most part, from participation in such ceremonies. * * *
>
> As Great Britain had been the first to exchange official ambassadors, so that nation was the first to invite the President to send a special ambassador. The occasion was the 60th anniversary of Queen Victoria's accession to the throne.[104]

[104] Wriston, Executive Agents in American Foreign Relations, op. cit., pp. 188–195.

The appointment of Whitelaw Reid as ambassador extraordinary on special mission for this occasion, the 60th anniversary of Queen Victoria's accession, has been noted as the first case of an executive agent to have that rank or title. In the following years additional appointments for ceremonial occasions followed rapidly. The conferring of personal rank was extended from ceremonial occasions to occasions in which the United States was represented at international conferences and other negotiating occasions by persons holding ranks of ambassadors or ministers without being confirmed by the Senate. For example, after the First World War the Secretary of the American commission to negotiate peace in 1918 was given the rank of minister plenipotentiary, and the four commissioners who represented the United States at the Washington Conference in 1921, two of them Senators, were given ambassadorial ranks.[105] While some Presidential representatives such as Colonel House under President Wilson carried simply a letter from the President, others, such as Elihu Root, who was sent on a commission to Russia in 1917, were given special ranks. Wriston commented in his book published in 1929:

> The precedents in this matter of giving name and dignity to executive agents were late in our history, but they developed with extraordinary speed. The altered circumstances in which the United States found itself seemed to demand resort to this expedient upon more frequent and a greater variety of occasions. Judging by the facts as they present themselves, it seems clearly to be the point of view of the executive that the President has the authority to appoint agents with such rank and title as he may desire, under his own prerogative. The fact that no protest has been made by the Senate, that Senators, the leaders of both parties in that body, have accepted appointments carrying rank without open criticism from their associates, give presumptive evidence that the opinion of the Senate now agrees with that of the executive.[106]

The practice of conferring personal ranks of ambassador and minister on Presidential agents later met with objection. On June 10, 1969, Senator J. W. Fulbright, chairman of the Senate Foreign Relations Committee, wrote Secretary of State William P. Rogers that the committee had discussed the practice of conferring personal ranks of ambassador or minister on an individual without Senate confirmation and in the committee's view the Constitution quite clearly gave the President the power to appoint ambassadors and ministers only "by and with the advice and consent of the Senate." The letter further stated that the Constitution:

> * * * does not provide that the President, the Secretary of State, or anyone designated by the President, may accord the personal rank of ambassador or minister on any individual, whether he is in the Foreign Service or not or whether he has ever been confirmed by the Senate.
>
> Such being the case, the committee wishes to go on record as opposing the practice of conferring personal ranks of ambassador or minister on individuals for any purpose and recommends that it be discontinued unless thereafter authorized by law. On the other hand, if the President wishes to designate an individual as his "personal representative" or "personal emissary" to carry out a temporary, routine diplomatic assignment, the committee would have no objection as long as such appointment is for a special assignment of limited duration.[107]

The State Department justified the practice on the ground that the personal rank of ambassador or minister might be conferred without conferring an office in the constitutional sense. In a letter of January 26, 1968, the Assistant Secretary for Congressional Relations, William B. Macomber, Jr., wrote Senator Fulbright:

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[105] Ibid., p. 197.
[106] Ibid., p. 200.
[107] Inserted in the Congressional Record, June 17, 1969.

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* * * the President has traditionally designated, in the discharge of his diplomatic function, so-called special and personal agents and representatives without obtaining the advice and consent of the Senate. Such designations are related to special assignments or are granted in connection with routine diplomatic assignments with the intention of assisting the person upon whom it is conferred to carry out his assignment or mission in a more effective fashion by providing somewhat more status and prestige than would normally accrue to that person. It does not in itself accord the recipient any additional powers, extra compensation or allowances, or any other monetary benefits and is, of course, limited in duration to a specific assignment or mission. Consequently, persons given the personal rank of ambassador or minister have never been considered to be "ambassadors and other public ministers" in the sense of article II, section II, of the Constitution.[108]

A memorandum of the Legal Adviser explained further:

The concept of officer of the United States within the meaning of article II, section II, clause 2, of the Constitution, has been held by the courts to embrace four principal elements: "The ideas of tenure, duration, emolument, and duties" (*United States* v. *Hartwell*, 73 U.S. 385, 393 (1867)). See also *United States* v. *Germaine*, 99 U.S. 508, 511–512 (1878); *Baskins* v. *United States*, D.C.S.C. 1940, 32 F. Supp. 518). An employment or rank which lacks one or more of those elements has not been considered as falling within the constitutional meaning of "office."

In the case of *Wood* v. *United States*, the Supreme Court affirmed the Court of Claims determination that "rank" may be conferred without conferring "an office" in the constitutional sense (15 C. Cls. 151, 159 (1879), affirmed, 107 U.S. 414 (1882)). See also Wriston, "Executive Agents in American Foreign Relations" (1929), 200–201, and Waters, "The Ad Hoc Diplomat," 36 (1903).

An officer of the United States in the constitutional sense must be appointed in the manner prescribed in article II, section II, clause 2, of the Constitution, i.e., by the President with the advice and consent of the Senate or as prescribed by statute; and only persons so appointed are "officers of the United States" in the constitutional sense (*Scully* v. *U.S.*, C.C. Nev. 1910, 193 F. 185; *Cain* v. *U.S.*, D.C. III 1947, 73 F. Supp. 1019).

It should be noted that by far the greater number of persons to whom the personal rank of ambassador or minister has been accorded are persons who are "officers of the United States" appointed to their respective offices pursuant to specific statutory authority, but who have, in addition, been given personal rank in order to facilitate the performance of their duties.[109]

In response to the committee's objection to the practice, however, Secretary of State Rogers in a letter to Senator Fulbright dated December 19, 1969, expressed concern at the "possible excessive use of personal rank in recent years," though he disagreed that any constitutional question was presented by its use. Secretary Rogers stated he would implement a new policy in which personal rank would be used only in connection with special missions for the President of an essentially limited and temporary nature.

The letter went on to say that the vast majority of those persons holding personal rank were holding full-time assignments to permanent missions. Instead of conferring personal rank of ambassador or minister on such people in the future, one of the following procedures would be used:

(*a*) For those Foreign Service officers assigned in positions below the level of chief of mission and for the "effective discharge of duties," the title of minister-counselor would be conferred. In addition, the Secre-

[108] Letter from Assistant Secretary for Congressional Relations, William B. Macomber, Jr., to Senator Fulbright, Jan. 26, 1968, inserted in the Congressional Record, June 17, 1969. See appendix for text.

[109] Memorandum of the Legal Adviser regarding the meaning of officers of the United States in the constitutional sense. Hearing Before the Committee on Foreign Relations, U.S. Senate, 91st Cong., 1st sess., on the Nominations of William B. Macomber, Jr. * * *, Sept. 23, 1969, pp. 4–5.

tary would recommend such appointees be confirmed by the Senate before conferring a rank of minister-counselor.

(*b*) For those not included under (*a*), but holding personal rank, the Secretary would recommend that the President nominate such persons as ambassadors or ministers, and submit their names to the Senate for confirmation whenever the office is of a permanent nature (as with U.S. representatives to international organizations).

Subsequently the number of persons holding personal rank of either ambassador or minister has declined. On May 1, 1969, when Senator Fulbright first wrote the Secretary of State on the problem, he reported there were 20 with the personal rank of ambassador and 63 with the personal rank of minister. As of January 1, 1970, there were still 20 with the personal rank of ambassador but only 47 with the personal rank of minister.[110] By January 1, 1971, there were 16 with the personal rank of ambassador and 23 with the personal rank of minister.[111]

The use of personal rank further declined to a level of five to ten a year after 1972 when Congress passed a law dealing with the subject [112] which states that appointments to personal ranks of ambassador or minister can only be conferred by the President "in connection with special missions for the President of an essentially limited and temporary nature of not exceeding six months." [113]

Although the Carter administration tried to modify the six month limitation during consideration of the Foreign Service Act of 1980, that legislation strengthened the provision by adding a requirement for a report to the Senate Foreign Relations Committee stating the justification for the appointments. The report was required 30 days prior to the conferring of such rank unless the President certified that urgent circumstances required the immediate conferral. Section 302 (B) of the Foreign Service Act of 1980 states:

(B)(i) Subject to the requirement of clause (ii), the President may confer the personal rank of ambassador or minister on an individual in connection with a special mission for the President of a temporary nature not exceeding six months in duration.

(ii) The President may confer such personal rank only if, prior to such conferral, he transmits to the Committee on Foreign Relations of the Senate a written report setting forth—

(I) the necessity for conferring such rank,

(II) the dates during which such rank will be held,

(III) the justification for not submitting the proposed conferral of personal rank to the Senate as a nomination for advice and consent to appointment, and

(IV) all relevant information concerning any potential conflict of interest which the proposed recipient of such personal rank may have with regard to the special mission.

Such report shall be transmitted not less than 30 days prior to conferral of the personal rank of ambassador or minister except in cases where the President certifies in his report that urgent circumstances require the immediate conferral of such rank.

(C) An individual upon whom a personal rank is conferred under subparagraph (A) or (B) shall not receive any additional compensation solely by virtue of such personal rank.

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[110] Department of State, "Persons Holding Personal Rank of Ambassador Accorded by the President (as of Jan. 1, 1970) and Persons Holding Personal Rank of Minister Accorded by the President (as of Jan. 1, 1970)."

[111] U.S. Senate. Committee on Foreign Relations. The Ambassador in U.S. Foreign Policy: Changing Patterns in Roles, Selection, and Designations. Committee print, July 1981.

[112] Ibid., p. 20–25.

[113] Public Law 92–353; 22 U.S.C. 901.

A recent example of the use of this authority was in the case of Paul Nitze, who was accorded the personal rank of ambassador on November 20, 1981 in order to commence the Intermediate Nuclear Force negotiations with the Soviet Union while the Senate was in recess. On December 2, 1981, the President submitted Mr. Nitze's nomination to the Senate.

THE RELATIONSHIP OF THE APPOINTMENT OF MEMBERS OF CONGRESS TO SERVE AS U.S. DELEGATES IN INTERNATIONAL MEETINGS

Constitutional questions relating to the appointment power have also been raised in connection with the appointment of Members of Congress as representatives on international negotiating bodies. Some of these appointments have been made by and with the advice and consent of the Senate but others have been made without Senate confirmation.

The appointment of Members of Congress with the advice and consent of the Senate to delegations in which they would have negotiating responsibilities dates far back in American history. Early instances are the appointment of Senator James A. Bayard of Delaware in 1813 as Envoy Extraordinary and Minister Plenipotentiary as one of three to negotiate and sign a treaty of commerce with Russia and his appointment in 1814 as Minister Plenipotentiary and Extraordinary as one of four to negotiate and sign a treaty of commerce and a treaty of peace with Great Britain, the Treaty of Ghent.[114]

As a more recent example, congressional delegates have regularly been included on the U.S. delegation to the United Nations General Assembly except for the 3 years between the first session of the United Nations General Assembly and the fifth session in 1950. Under an informal arrangement reached among the House, the Senate, and the Department of State, during election years for Members of the House, two Members of the Senate Foreign Relations Committee are included in the delegation and on the alternate years two Members of the House Foreign Affairs Committee are selected.[115]

The practice of Presidential appointment of Members of Congress without the advice and consent of the Senate is also not new.

Senators Henry Cabot Lodge and Oscar W. Underwood accepted appointment by President Harding as delegates, with the rank of ambassador, to the Washington Conference on the Limitation of Armament in 1922, and numerous conferences have taken place since that time in which Members of Congress served as members of the delegation appointed by the President without Senate consent. Even in the drafting of the United Nations Charter, long considered by many to be a model of executive-legislative cooperation, the names of the U.S. delegation to the San Francisco Conference were not submitted to the Senate. The delegation included Senators Arthur H. Vandenberg and Tom Connally and Representative Sol Bloom and Charles A. Eaton.

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[114] Also appointed to this delegation was Henry Clay, who resigned his position as Speaker of the House when his nomination was submitted to the Senate, Jan. 14, 1814 (U.S. Cong., Senate, Executive Journal, vol. 2, p. 451)

[115] U.S. Congress, Senate, Committee on Foreign Relations, "Background Information on the Committee on Foreign Relations," 1968 edition, p. 23.

Some of the debate over the constitutionality of the appointment of Members of Congress as delegates in international negotiations has centered on whether such appointments were precluded by article I, section 6, of the Constitution. It provides:

> No Senator or Representative shall, during the time for which he is elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no Person holding any Office under the United States, shall be a member of either House during his continuance in office.

The appointment of a Member of Congress to a negotiating commission has been justified on the ground that such a commission was not such an office. This justification, however, has also contributed to allowing the President to appoint other negotiators without referring their nominations to the Senate on the ground that they too were not officers.

The wording of the United Nations Participation Act of 1945 was devised to meet this problem. Then Under Secretary of State Dean Acheson pointed out in testimony on the act that if the requirement of Senate confirmation for representatives at the United Nations General Assembly, which had been added by the Senate to the original bill, constituted the creation of a civil office or if the addition of a salary constituted an increase in the emolument of the civil office so created, then the Constitution would prohibit any then current Member of Congress from being appointed as a delegate during his current term.[116] In the final legislation as enacted (Public Law 79–264), the addition of a salary was worked "not to exceed" so that the executive could determine the salary at zero, and a specific exemption from compensation for any Member of Congress serving was added. Subsequent amendments to the act have retained both the provision on compensation and the exemption from salary for Members of Congress serving as delegates to the General Assembly.

A more basic question presented by the appointment of Members of Congress as delegates in international negotiations, a situation which puts them in the position of receiving instructions from the President, is occasioned by the doctrine of separation of powers. Concern over this possibility has existed regardless of whether such appointments have been confirmed by the Senate.

Presidential direction of a Member is expressly mandated in the case of Members of Congress serving as delegates to the United Nations General Assembly. The U.N. Participation Act states that the representatives in the various organs of the United Nations "shall at all times, act in accordance with the instructions of the President transmitted by the Secretary of State unless other means of transmission is directed by the President and such representatives shall, in accordance with such instructions, cast any and all votes under the Charter of the United Nations." [117]

The congressional members of the delegation to the United Nations General Assembly are subject to confirmation, but several such members have pointed out the existence of a constitutional problem.

Senator Vandenberg described the problem as follows:

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[116] U.S. Congress. House. Committee on Foreign Affairs. "Hearings on Participation by the United States in the United Nations Organization." Dec. 7, 1945. p. 9.

[117] Sec. 3 of United Nations Participation Act of 1945, as amended; 22 U.S.C. 287.

* * * I am increasingly impressed with the difficulties confronted by "congressional" representatives because of their dual capacity. Of course it will always be true that a man cannot serve two masters. Yet that is precisely what I undertake to do—for example—when I, as a Senator, sit in the General Assembly as a delegate. I am helping to make decisions for the United Nations which must pass in review before the American Congress. Having participated in the United Nations in helping to make the decisions, I am not a "free agent" when I return to the Senate to function in my "congressional" capacity. Indeed, it could be a most embarrassing and difficult situation in the event that I did not approve of some decision made by the United Nations. I should dislike to oppose in Congress anything to which I had given my consent (if only by reluctant acquiescence) in the United Nations.

[Vandenberg pointed out to Mrs. Roosevelt that U.N. delegates were not "free agents," that by the very commissions which they held they rightfully voted as instructed by the President, and with possibly a subsequent moral obligation to defend this position in Congress. The question, Vandenberg surmised, went to the heart of the traditional "checks and balances" American governmental system. At the same time he urged continuity in American representation at the General Assembly * * *.] [118]

Subsequent member-delegates have pointed out in their reports that the situation could be a source of embarrassment to a Member of Congress serving as a U.N. delegate if the Member were asked to take a position as a U.N. delegate in direct opposition to his personal convictions or that of the majority of his constituents, or that it could be a source of embarrassment to the executive branch if the Member of Congress were to voice his opposition upon resuming his legislative responsibilities or refuse a particular assignment while serving.

One instance in which a congressional delegate disagreed with the instructions he received from Washington occurred in 1960 when Senator Wayne Morse was assigned to represent the United States on the Fourth, or Trusteeship, Committee which had jurisdiction over colonial questions. In his subsequent report on that session, Senator Morse cited several instances in which the United States vote was cast contrary to the way he believed the United States should vote and the views he expressed in debate in the United Nations. He reported, for example:

Another sorry example of United States alignment on the wrong side of a colonial issue was the final United States vote of abstention on the South West Africa resolution. The United States delegation had no choice in the matter, because the vote was dictated by instructions from the State Department. Here again, if the United States delegation to the United Nations had been allowed to follow its own best judgment based upon the best interests of the United States, as they developed in the course of the debate at the United Nations, the delegation would have voted in favor of the resolution.

Again, too, the opening speech I made on behalf of the United States was full of sympathy for the general welfare of the inhabitants of South West Africa. But as we got down to specifics, the State Department edged away.[119]

A defense of the congressional delegate's right to assume a position of opposition on the resumption of his legislative duties was expressed in one report:

Members of Congress who serve on delegations, of course, do not cease to be independent legislators except in the discharge of the specific assignment entrusted to them by the President and only for the duration of that assignment. It is not impossible, therefore, that congressional members of a delegation may assume a different position on any given issue when they cease to act as

[118] Vandenberg, Arthur H., Jr., "The Private Papers of Senator Vandenberg," Boston, Houghton Mifflin Co., 1952, p. 330.

[119] The United States in the United Nations: 1960—A turning Point. Supplementary Report to the Committee on Foreign Relations, United States Senate, by Senator Wayne Morse. Committee print, 87th Congress, 1st session, February 1961, p. 12.

agents of the President and resume their legislative functions. It is essential that the executive branch understand fully this possibility, particularly in requesting congressional members of delegations to represent the United States and to maintain official positions at the United Nations on questions which may subsequently involve appropriations or other acts of the Congress.

Members of Congress have independent responsibilities to their constituents, which cannot in any way be compromised by service at the United Nations. We stress this point because we believe the practice of including Members of Congress on U.S. delegations is a desirable one. It is one which we should like to see continued, provided, of course, that it remains consonant with the concept of separation of powers within our Government.[120]

Various alternative approaches to this problem exist within the constitutional limitations.[121] A Member of Congress who feels he would be unable to reconcile the role of agent of the Executive within the United Nations with his legislative responsibilities is free to decline appointment as a United Nations delegate. Members who accept appointment as delegates to international meetings might insist that they have complete freedom of action rather than acting under instructions from the President. Senator Vandenberg made his service on the San Francisco Conference delegation conditional upon retaining his freedom of action [122] and according to Senator Connally President Roosevelt met with the delegation on March 23, 1945, and asked that they work within the framework of the Dumbarton Oaks proposals but otherwise, "I want you to have complete freedom of action to make your own decisions." [123] As another alternative, Members of Congress could attend international meetings as observers or advisers rather than as members of the delegation.

In conclusion, it might be pointed out that inviting congressional participation in international negotiating bodies appears to have developed as one method of promoting congressional support of international organizations and conferences and any agreements which might result from them. Whether it should be continued depends on an assessment of whether it is the best method for achieving this purpose at the present time or whether it should be supplanted by other forms of consultation between the executive and legislative branches.

(3) Influential foreign policy positions not subject to confirmation

An area of growing concern has been appointments in the foreign policy-national security area which are neither statutory nor subject to confirmation by the Senate, and yet have become increasingly influential. The two most prominent of these are the Assistant to the President for National Security Affairs, and the Director of the Bureau of Politico-Military Affairs of the State Department.

Assistant to the President for National Security Affairs

The position of Assistant to the President for National Security Affairs (also referred to as the National Security Adviser) dates back

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[120] U.S. Congress. Senate. Committee on Foreign Relations. Observations on the United Nations. Report of Senator Bourke B. Hickenlooper and Senator Mike Mansfield. S. Doc. 26, 86th Cong., 1st sess., Washington. U.S. Government Printing Office. 1959. pp. 5–6.

[121] In 1979 and 1980 Representative Henry S. Reuss explored a proposal for a constitutional amendment to permit Members of Congress to serve in key executive branch offices. See U.S. Congress. House. Committee on Banking, Finance and Urban Affairs. Looking Toward the Constitutional Bicentennial. Committee print 96–9. Washington. U.S. Government Printing Office. 1980. 153 p.

[122] Vandenberg, Arthur H., Jr. The Private Papers of Senator Vandenberg. p. 154.

[123] Connally, Thomas Terry. My Name is Tom Connally. New York, Thomas Y. Crowell Co., 1954. p. 266.

to 1969, when President Richard Nixon appointed Henry Kissinger to that position. However, its emergence as an influential position in foreign policy actually stems from the National Security Act and the creation of the National Security Council (NSC) in 1947.

Under the terms of the act (50 U.S.C. 402) the members of the NSC are the President, the Vice President, and the Secretaries of State and Defense. The only other organizational stipulation in the act is that "The Council shall have a staff to be headed by a civilian executive secretary who shall be appointed by the President. . . ." [124] The position of Executive Secretary was not subject to confirmation by the Senate and, at any rate, has lapsed in NSC operations.

The first NSC, President Harry Truman's, saw limited use. President Dwight Eisenhower instituted a much more formal and elaborate NSC structure, in which supervision of the NSC went to a Special Assistant for National Security Affairs, who replaced the Executive Secretary. Such a position had been suggested by an outside study of NSC operations in 1956, with the recommendation that such a post would improve policy coordination, the NSC's main function, acting as the President's agent, and not as an independent adviser.[125]

Under Presidents Kennedy and Johnson the role of the NSC waned, but the role of the Special Assistant increased. McGeorge Bundy, who held the post from 1961 to 1966, emerged as an active policy maker rather than a neutral coordinator of options from other departments and agencies. This was also true of his successor, Walter W. Rostow, whose title was changed to Special Assistant.[126]

President Nixon reconstituted a formal NSC structure with roots in Eisenhower's NSC, from which the new President expected distinct options rather than consensus opinions. Kissinger became the Assistant for National Security Affairs, and came to dominate not only the NSC and its committee structure, but eventually the entire foreign policy apparatus as well.[127]

It was this dominance of the foreign policy apparatus and the emergence of the National Security Adviser as an alternative spokesman to the Secretary of State which began to disturb some observers. At least two issues were at stake, the fact that U.S. foreign policy appeared to have two rival centers and spokesmen, and the fact that the Assistant to the President was in no way accountable to Congress. The issue of Kissinger's rivalry with and dominance over Secretary of State William Rogers became moot when Kissinger succeeded Rogers in 1973, while retaining his National Security post. This brought renewed criticism, however, especially raising the issue of whether one person could handle both jobs successfully or should hold them concurrently, and what his relationship to Congress was, e.g., regarding executive privilege.

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[124] 50 U.S.C. 402(c).

[125] See U.S. Library of Congress. The National Security Council: Organizational History [by] Mark M. Lowenthal. [Washington, June 27, 1978]. CRS Report No. 78-104 F, pp. 16-17.

[126] Ibid., pp. 20-22.

[127] Of the nine major substructures in the Nixon NSC, Kissinger chaired seven: (1) Senior Review Group, directing and reviewing major policy studies; (2) Intelligence Committee, guiding national intelligence efforts and products; (3) Verification Panel, assessing SALT compliance issues; (4) Defense Program Review Committee, to integrate defense and domestic considerations in allocating national resources; (5) Washington Special Action Group, for contingency planning and crises; (6) "40" Committee, managing covert actions; and (7) International Energy Review Group.

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Under President Jimmy Carter the issues resurfaced, as National Security Adviser Zbigniew Brzezinski became a rival to Secretary of State Cyrus Vance. The rivalry issues remained vibrant through the first year of the Reagan Administration as well, with National Security Adviser Richard Allen and Secretary of State Alexander Haig having frequent, sometimes public, disputes. The friction grew to the point that President Reagan had to call in his two subordinates and order an end to the feuding.[128] The immediate issue was seemingly eased with Allen's dismissal for other reasons in January 1982, but the institutional anomaly remains.

The influence and power of the Assistant for National Security Affairs stems from his proximity to the President, especially in the conduct of daily security briefings for the President,[129] and his central position in coordinating options and advice from a wide group of agencies with national security/foreign policy roles. The NSC apparatus is fluid, however, and thus wholly responsive to the administrative or managerial style of each President.

While this flexibility may suit the needs of the President, it does not respond to congressional concerns. In essence, Congress has no contact with or control over the Assistant for National Security Affairs, as he is not subject to confirmation and remains a presidential assistant. This can be particularly frustrating for Congress when it is evident that this official is playing a major role in formulating foreign policy.

One proposed solution for this problem is to subject the Assistant for National Security Affairs (and possibly the Deputy), to confirmation by the Senate. Such a proposal was made in 1979 by Senator Edward Zorinsky, as an amendment to the State Department Authorization for FY 1980–81. Senator Zorinsky worded his amendment in such a way that the President had the discretion to choose whether or not he wanted these two positions filled, but making them subject to confirmation if appointed. He explained the necessity of the amendment as follows:

> It is necessary that the Senate:
> Come to grips with the fact that there are two Secretaries of State within the Executive Branch of this government. One goes by the title of Secretary of State and the other is known as the Assistant to the President for National Security Affairs;
> Gain some measures of control and exercise some degree of oversight with respect to the Office of the Assistant to the President for National Security Affairs:
> Make the principal occupants of this office subject to the advice and consent of the Senate; and
> Do what it can to assure that in the field of foreign policy the Executive Branch, regardless of the number of spokesmen, speaks with one voice * * *[130]

The amendment was not supported by the Carter Administration, including Secretary of State Vance, who called it "unnecessary."[131]

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[128] Raines, Howell. Reagan Cuts Off Haig Dispute. New York Times. Nov. 6, 1981, p. A9. Schram, Martin. Reagan Orders End to Haig Dispute. Washington Post, Nov. 5, 1981, p. A1.

[129] In a conscious effort to downgrade the National Security Adviser's role, the Reagan administration at first decided that Richard Allen would not have daily briefings with President Reagan, but report to him via Presidential Counsellor Edwin Meese. Under William Clark the position has been upgraded, and includes daily meetings.

[130] U.S. Congress. Senate. Committee on Foreign Relations. Foreign Relations Authorization Act, Fiscal Years 1980 and 1981. Report, to accompany S. 586. Washington, U.S. Government Printing Office, 1979. (Senate, Report No. 96–116) pp. 26–27.

[131] Goshko, John M. Senate Voice Sought on Brzezinski's Successors. Washington Post, May 11, 1979, p. A2.

The House authorization bill did not contain this amendment, and it was deleted by the conference committee. However, in so doing the conference committee also noted: The conference substituted does not contain a provision on this issue.

> The committee of conference is, however, deeply concerned about the role of the President's Assistant for National Security Affairs and the lack of his accountability to the Congress. The members of the conference committee believe it is essential that the Secretary of State be perceived clearly to be the principal officer other than the President with responsibility for formulation and implementation of foreign policy. The President clearly should have appropriate personal staff support in the White House to enable him to discharge his Constitutional responsibilities. Officers, however, who enunciate and shape U.S. foreign policy must be accountable to Congress. The committee of conference believes that a thorough review by both the Congress and the Executive of the function of the NSC structure and the specific role of the Assistant to the President for National Security Affairs is necessary and should be conducted in the near future.[132]

Prompted by Senator Zorinsky's amendment the Senate Foreign Relations Committee held hearings in April 1980 on the role of the National Security Adviser and his accountability. The committee invited the incumbent adviser, Zbigniew Brzezinski, and his deputy, David Aaron, to testify, and asked the Carter Administration to designate a spokesman if neither could appear. Deputy Secretary of State Warren Christopher was chosen to represent the Executive, and went on to oppose the statutory creation of an office subject to Senate confirmation.[133]

The administration's position rested on several points. First, Christopher argued that this proposal would elevate the National Security Adviser and undermine the authority of the Secretary of State as the principal foreign policy figure after the President. Second, he noted that Congress had access to the Secretaries of State and Defense, who are statutory members of the NSC, and that they have statutory authority for foreign policy programs, while the National Security Adviser does not, being only an adviser and coordinator. Finally, and paramount according to Christopher, such a proposal would "impinge upon the Office of the President by limiting his necessary flexibility in the field of foreign affairs." [134]

Lt. General Brent Scowcroft, National Security Adviser to President Ford, also opposed this idea, again stating that it would create a formal split between the Secretary of State and the Assistant to the President. I. M. Destler of the Carnegie Endownment for International Peace agreed that Senator Zorinsky's proposal would entrench the Assistant to the President and, in the words of Senator Frank Church, "institutionalize the problem." Destler preferred eliminating the National Security post entirely and relying upon the Executive Secretary as a staff assistant.[135]

The common thread in all this testimony was that the statutory creation of such a post would in effect formalize the recurrent rivalry

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[132] U.S. Congress. Senate. Committee of Conference. State Department Authorization Act, Fiscal Years 1980 and 1981. Conference Report, to accompany H.R. 3363. Washington, U.S. Government Printing Office, 1979. [House. Report No. 96–399] p. 24.

[133] U.S. Congress. Senate. Committee of Foreign Relations. The National Security Adviser: Role and Accountability. Hearing, 96th Congress, 2d Session, Apr. 17, 1980. Washington, U.S. Government Printing Office, 1980, pp. 1–2.

[134] Ibid., pp. 5–9.

[135] Ibid., pp. 24–25, 32–33.

between the Assistant to the President and the Secretary of State. Even if the National Security Adviser were confirmed, Congress would not necessarily have increased access to him. This aspect of the issue would remain separate and highly problematical given the recognition of executive privilege by the Supreme Court, especially in the areas of "foreign affairs and national security." [136]

Director of Bureau of Politico-Military Affairs

A similar issue, although seemingly a less pressing one, involves the Director of the Bureau of Politico-Military Affairs (PM) at the State Department. The politico-military staff was established in the early 1960's as a small unit responsible to the Deputy Under Secretary of State for Political Affairs. It was part of a continuing State Department effort to integrate the management of political and military aspects of national security policy, a process that the Defense Department had effectively advanced with the creation of its Office of International Security Affairs in 1953. PM became a bureau in 1969.

The duties of the Director as described in the Organization Manual of the State Department are:

> Serving as a principal adviser in developing national security policy regarding U.S. military activities affecting foreign policy;
>
> Providing policy guidance, formulation and review and liaison with the Defense Department in such areas as the politico-military aspects of arms control, non-proliferation and outer space;
>
> Assisting the Under Secretary of State for Security Assistance, Science and Technology in supervising the Security Assistance and Foreign Military Sales programs, and serving as the Under Secretary's Deputy on the Arms Export Control Board;
>
> Supervising the Office of Strategic Nuclear Policy, Theater Military Policy, Regional Security Affairs, Nuclear Policy and Operations, Security Assistance and Sales, Security Assistance Special Projects, Munitions Control, and the Technology Transfer Assessment Staff.[137]

Thus, the Director of PM is responsible for a number of complex and cross-cutting policy areas which are of major interest and concern to Congress. In the words of one PM staff member, the Director is the Secretary of State's military adviser.

Based on these areas of responsibility, strong arguments can be made that the Director of PM should be subject to confirmation by the Senate if that body is to pass on all major foreign policy appointments.

The confirmation of the Director of PM raises different issues than does that of the National Security Adviser. At present the Director does make himself available to congressional committees. However, the creation of a specific statutory position within the State Department might raise the issue of whether to require confirmation of the heads of other Bureaus of equivalent rank and greater longevity, such as Intelligence and Research, who are not currently subject to confirmation.

The easiest method to secure Senate confirmation for such posts would be to increase the number of Assistant Secretaries allowed in State, which is currently 13 (22 U.S.C. 2652). The Secretary has the authority (22 U.S.C. 2664) to prescribe their duties. Or, if Congress desired, an Assistant Secretary for PM could be required, as was the case with the Assistant Secretary for Oceans and International Environmental and Scientific Affairs (22 U.S.C. 2655a).

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[136] *United States* v. *Nixon*. 418 U.S. 683 (1974).

[137] U.S. Department of State. Organizational Manual. (Washington, revised Oct. 22, 1981), p. 1 FAM 200.

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VI. Options for Change

In recent years several groups have made proposals for improving the Senate's handling of nominations.

The interest group Common Cause made a series of proposals after a study in 1977 that concluded the Senate confirmation process was perfunctory. Looking at the entire range of appointments in all fields, the public interest group felt that Presidential nominees had been routinely confirmed with little scrutiny and no standards for judgment; nominees were hastily considered without the benefit of a full record or tough scrutiny; and there was a "hodge-podge of procedures and practices" differing from committee to committee.[138]

The Senate Committee on Governmental Affairs, during 1977 and 1978 studied the problem as it related to nominees for Federal regulatory agencies. It recommended specific criteria nd procedures for nominees and the creation of an Office on Reguiatory Appointment Investigations.[139]

After surveying the wide disparity of practices on nominations among Senate committees, a Congressional Research Service report discussed a number of options that could be implemented either through a Senate rule requiring uniform procedures or by individual committee action.[140]

Most of the proposals deriving from such studies have aimed at increasing the amount of attention given to nominations and making the Senate's confirmation proceedings a more rigorous and independent check on appointments. Several of the proposed changes have been adopted by the Foreign Relations Committee. These include the development of an improved public record through a personal and financial background questionnaire; insisting on adequate time for deliberation by requiring a specified time period between receipt of a nomination and the holding of hearings; written committee rules and adoption of systematic procedures for the review of nominations; and the holding of hearings on policymaking posts.

The problem of time required for nominations is particularly acute for the Foreign Relations Committee for a number of reasons. Because of the constitutional requirements, a large number of nominations automatically require Senate confirmation. Congress has subjected additional positions to confirmation in order to maintain a check on the President in a field in which he has often been able to act more independently than in other fields. The result is that there are now so many nominations requiring confirmation, and so many hearings, that the procedure may be taking more time than it deserves when measured against other committee responsibilities.

Two questions for the Foreign Relations Committee are framed: First, how can it reduce the time spent on nominations without loss of beneficial confirmation functions? Second, how can it assure that the time it does spend is focused as effectively as possible on significant positions and nominations that deserve careful scrutiny?

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[138] Adams, Bruce. The Senate Rubberstamp Machine. A Common Cause Study of the U.S. Senate's Confirmation Process. Washington. Common Cause. November 1977. p. 150.

[139] U.S. Congress. Senate. Committee on Governmental Affairs. Principal Recommendations and Findings of the Study on Federal Regulation. Volumes I–VI. 95th Congress. Committee print. September 1979. pp. 10 and 11. See also Volume I. The Regulatory Appointments Process. Committee print. January 1977. p. 563.

[140] Parris, Judith H. Consideration of Presidential Nominees by Senate Committees. Congressional Research Service Report No. 80–35–GOV. Jan. 21, 1980.

Following are the options discussed in this chapter:

A. Reduce positions for which confirmation is required by law.
B. Include important officials not now confirmed.
C. Reduce the number of hearings on nominations.
D. Conduct hearings at subcommittee level.
E. Establish Senate Office on Appointment Investigation.
F. Abandon courtesy calls.
G. Limit political appointments.
H. Establish criteria.

A. REDUCE NUMBER OF POSITIONS FOR WHICH CONFIRMATION IS REQUIRED BY LAW

The first approach is periodically to examine the positions for which confirmation is required with a view to reducing the requirements.

The largest number of nominations, averaging more than 2,000 each Congress, are those on the routine lists of appointments and promotions of Foreign Service officers. While these lists might be shortened, as has been discussed, their consideration is already very brief so the time saved would not be significant.

The second largest category is comprised of ambassadors to foreign countries. Since confirmation of ambassadors, ministers, and consuls is required by the Constitution, it would appear more feasible to search for methods to streamline procedures for their confirmation than to attempt to change the constitutional requirement.

It is in the category of nominations of offices established by statute that some reductions might be possible. There are approximately 140 offices statutorily subject to confirmation. (See Appendix I for citations and provisions of law.) These include more than 50 posts in Federal agencies, 40 members of advisory commissions and boards of directors, and approximately 50 representatives to international organizations. A summary of the numbers in each category follows:

	Number of positions
Federal agencies:	
Department of State	26
Agency for International Development	11
Peace Corps	2
U.S. Arms Control and Disarmament	6
International Communication:	
Agency	6
Total	51
Advisory Commissions and Boards of Directors:	
Overseas Private Investment Corporation	8
Inter-American Foundation	7
General Advisory Commission on Arms Control	15
Board for International Broadcasting	5
U.S. Advisory Commission on Public Diplomacy	5
Total	40
International Organizations:	
United Nations	16
UNESCO	10
World Health Organization	1
International Atomic Energy Agency	3
North Atlantic Treaty Organization	1
World Bank, International Monetary Fund, International Finance Corporation, and International Development Association	6
Inter-American Development Bank	3
Asian Development Bank	3
African Development Bank	2
International Joint Commission	3
Total	48

Throughout each category there is considerable inconsistency in the requirements. As seems logical, among the Federal agencies, the State Department has the most nominations requiring confirmation. Confirmation is required there of all the assistant secretaries, some designated by law and others not, and of several other positions as well including the Counselor and the Legal Adviser. In the Peace Corps, at the other extreme, only the Director and Deputy Director require confirmation. Somewhere in between, for the Agency for International Development confirmation of 11 unspecified administrators is required. For the Arms Control and Disarmament Agency and the International Communications Agency, the head and deputy head plus four unspecified assistants are required to be confirmed.

One option might be to require the confirmation of only the top administrator and chief deputy.

This would permit the Senate to concentrate its efforts on the key officials of the agencies and hold the chief administrator wholly responsible for the appointment of all other persons.

On the other hand, it would remove direct Senate control over the appointment of assistant administrators who are often the key policy makers on specific regional and functional problems.

The question is whether the Senate has or can have any more influence over an agency in which it confirms eleven officers, such as the Agency for International Development, than one in which it confirms six, such as the International Communication Agency, or two, as in the Peace Corps.

A second option is to reduce the requirements for Senate confirmation of members to advisory commissions or boards of directors, possibly to require confirmation of only the chairman. This would reduce confirmations in the area where individual appointees have the least power, since advisory commissions are not usually involved in the administration of a program. Boards of Directors, such as those of the Overseas Private Investment Corporation and the Inter-American Foundation may be in a different category since they are responsible for the management of programs. However, the Foreign Relations Committee already includes most advisory committees among the part-time appointments on which it does not always hold hearings, so little time and effort would be saved by eliminating the confirmation requirement. Moreover, there has been at least one occasion—the General Advisory Committee on Arms Control and Disarmament in 1971—when the Foreign Relations Committee was able to prevent an advisory committee from being filled with persons with an orientation the committee felt was not appropriate for the advisory body.

The third category of legislatively required confirmations is U.S. representatives to international organizations.

At the present time the pattern of confirmation requirements for international organizations is more erratic than for either of the other two categories. Even within the dozen organizations for which confirmation is required, the pattern of requirements is inconsistent. The United Nations Participation Act names approximately sixteen positions which are to be confirmed. The International Atomic Energy Agency Act specifies that the Representative, Deputy Representative, and delegates and alternates to the General Conference are to be confirmed. Legislation on UNESCO requires that representatives and

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alternates to the General Conference be confirmed, but the permanent U.S. representative is submitted voluntarily in order to obtain the rank of ambassador. For the World Health Organization, confirmation is required only for the representative of the United States on the Executive Board. The only other confirmation requirements in this category are for the Governor and Executive Directors (and alternates) of the international financial institutions, the U.S. permanent representative to the North Atlantic Treaty Organization (not the NATO commander), and the commissioners on the International Joint Commission with Canada.

For most of the approximately eighty international organizations to which the United States belongs, there are no confirmation requirements. While many of the organizations are highly technical, some of them, such as the Food and Agricultural Organization and the International Labor Organization, have the potential for international political influence.

One approach to dealing with the problem might be an International Organization Participation Act that would, as one part, specify which officials are to be confirmed or set forth rules describing the circumstances in which U.S. representatives or delegates are to be confirmed. At the present time participation legislation regulates U.S. involvement in only a few international organizations. The United States is a member of a large number on the basis of treaties or agreements that specify the international obligations but do not cover internal U.S. procedures for participation.

The establishment of rules specifying circumstances for confirmation might result in the submission of more nominations in the case of some organizations, but it might reduce the number in others. One possible rule, for example, would be that only the chief U.S. representative or delegate to international organizations, or a list of specified organizations, be confirmed; this could arguably provide a sufficient channel of communication with the Senate. Another determining circumstance might be whether the U.S. representative had already been confirmed by the Senate in another capacity. For example, a Foreign Service officer might not need to be confirmed for assignment as a representative to an international organization, since the United States would be represented by a person who had been deemed to meet the Senate standards on a prior occasion.

The case for current practice

Though some participants in and observers of the Senate are concerned with the volume of confirmations and are interested in reducing the number of nominations submitted for Senate confirmation, others are now comfortable with the current pattern. Little time ordinarily is spent on reviewing nominations. It might be best, they argue, to acknowledge that Senate approval of a large number of nominees will be perfunctory but worth preserving in order to maintain the Senate's right to prevent objectionable nominations to a rather wide range of positions. From this perspective, confirmation provides a mechanism for checking executive abuse. Though rarely used to constrain the executive, its net should continue to be an extensive one. Just the knowledge that nominations are subject to Senate confirmation, moreover, tends to discourage abuse, whether or not the Senate can give consideration to most of them.

B. INCLUDE IMPORTANT OFFICIALS NOT NOW CONFIRMED

The "problem" of appointments not currently subject to confirmation by the Senate can be treated by legislation creating statutory positions with the requirement of Senate confirmation. The legislative vehicle itself would be fairly simple. For both the positions for which such legislation has been suggested, the Assistant to the President for National Security Affairs and the Director of Bureau of Politico-Military Affairs at the State Department, however, significant questions have also been raised.

The amendment to the FY 1980–FY 1981 State Department Authorization proposed by Senator Edward Zorinsky in 1979 offers a convenient starting point concerning the National Security Adviser. As noted earlier, the Zorinsky amendment would have created the statutory positions of Assistant and Deputy Assistant for National Security Affairs. The appointments would be made at the discretion of the President, but when made would be subject to confirmation by the Senate.

Several issues arise from this basic proposal:

Should both positions be made statutory?

Should they be mandated, or filled at the discretion of the President?

Should the duties of the National Security Adviser be specified?

Should there be an explicit connection between the National Security Adviser and the National Security Council? (This is not currently the case. In fact, the National Security Adviser is paid out of the funds appropriated for assistance to the President and not those appropriated for the NSC.[141])

Another issue to be considered is the extent to which the creation of a statutory position would institutionalize rivalry between the National Security Adviser and the Secretary of State.

Given the reactions of past administrations it is to be expected that the executive branch would oppose such legislation, perhaps stressing once again the necessary confidentiality of such a position. However, such an argument is also true for other positions which are subject to confirmation. Further, the heads of most major units within the Executive Office of the President are subject to confirmation: Chairman of the Council of Economic Advisers, the Director of OMB, the Office of Science and Technology Policy, etc.

One final problem which should be considered with regard to the confirmation of the National Security Adviser is the question of committee jurisdiction. The National Security Act generally comes under the jurisdiction of the Armed Services Committees. Those sections dealing with the Director of Central Intelligence and the Central Intelligence Agency are the responsibility of the Intelligence Committees. Therefore, it is not clear to what committee nominations to a statutory position of National Security Adviser would be referred since the duties of the National Security Adviser include defense and intelligence as well as foreign policy concerns.

The creation of a statutory position of Director of Politico-Military Affairs poses fewer difficult issues. It could be done simply by revising

[141] See the testimony of Christine Dodson, NSC Staff Secretary in U.S. Congress. Senate. Committee on Appropriations. Treasury, Postal Service and General Government Appropriations for FY 81. Hearings on H.R. 7583. Part 2 (pp. 1–728). Washington, U.S. Government Printing Office, 1980, p. 198.

22 U.S.C. 2652 in order to expand the number of Assistant Secretaries of State (or their equivalents in rank), which are currently subject to Senate confirmation. Congress would have to consider whether it wanted to specify the existence of this precise office, or leave it up to the discretion of the Secretary, as is usually the case. There might be pressure from State to increase the number of Assistant Secretaries further in order to accommodate other bureaus as well, such as Intelligence and Reseach.

C. REDUCE NUMBER OF HEARINGS ON NOMINATIONS

Another option for reducing committee time consumed in nominations is for the Foreign Relations Committee to reduce the number of formal hearings it holds on nominations. At the present time the committee holds hearings on virtually all full time positions, resulting in hearings on as many as 136 nominations a year.

The committee could modify its guidelines for holding hearings, so that it would automatically hold hearings only on nominations to a limited number of key policymaking positions and major ambassadorial positions. Hearings on other nominations could be scheduled in response to a request from any member of the committee. This would assure opportunity to hold hearings on any nomination that was controversial or that yielded questionable data in the background research of committee staff.

Another way of decreasing the number of nominations hearings would be to exempt appointments of Foreign Service Officers to ambassadorships and State Department or other foreign affairs agency offices from automatic hearings. Senators still could request hearings on nominations of particular concern.

Foreign Service officers comprise a large group of the nominees to both diplomatic posts and positions in the foreign affairs agencies. Almost a third (44 out of 136) of the hearings held on nominations during 1981 were on Foreign Service officers being assigned to new posts. Their appointments are already subject to a check by an executive branch panel because the Foreign Service Act provides a system under which Foreign Service officers are regularly evaluated for competence and character. Hearings could still be held when there was a question of policy or suitability.

On the other hand, the value of the confirmation requirement does not lie solely in the opportunity to block an undesirable appointment. Another important function of the confirmation process has come to be the method of communication it provides between the Senate and the executive branch. The hearings provide an opportunity for the Committee on Foreign Relations to become acquainted with officials of the executive branch who will be dealing with foreign policy, and for the Senate, press and public to get an impression of the nominee. They can be used as a method of foreign policy oversight, obtaining information from diplomats who are moving from one post to another or reviewing problems in the geographic or functional area involved. The hearings also provide an opportunity to convey the views of the Senators to the incoming nominees and alert them to the congressional role in foreign policy formulation.

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The communication functions of the confirmation process requires time, however, and the limited amount available for hearings must be divided among nominations and other matters such as treaties, legislation, and policy oversight.

D. CONDUCT HEARINGS AT SUBCOMMITTEE LEVEL

An option aimed at spreading out the workload among individual Senators on the committees is to have the subcommittees of the Senate Foreign Relations Committee, instead of the full committee, hold hearings on most nominations. The decision as to approval could still be made by the full committee, based on the subcommittee's report.

At the present time hearings on nominations are considered full committee meetings. Although as a general rule all committee members are expected to attend, few are able to do so regularly. In a year when 17 members of the Foreign Relations Committee are asked to attend hearings on a hundred nominees, there are in effect 1,700 obligations created by nomination hearings. Dividing the nominations hearings among the seven subcommittees could reduce this total by more than half because fewer members would be expected to attend each hearing.

If the hearings on 136 nominations during 1981 had been divided among the seven subcommittees, each subcommittee would have been responsible for at most two dozen. In several cases full committee hearings probably would have been held anyway, such as on the nominations for the Secretary and Deputy Secretaries of State or the heads of the other foreign affairs agencies. In other cases there might have been two subcommittees interested and joint subcommittee hearings would have been appropriate. For example, both the Subcommittee on East Asian and Pacific Affairs and the Subcommittee on International Economic Policy might have been interested in the nomination for a Director of the Asian Development Bank.

In practice a hearing is often chaired by the chairman or another member of the relevant subcommittee. Formal designation of a nomination hearing as a matter of subcommittee jurisdiction would simply carry the practice a little further and more systematically distribute responsibility for participation in nomination hearings among members of the committee.

Another argument in favor would be that hearings at the subcommittee level would establish a contact between an administration official and the consultative subcommittee with whom the official would be discussing matters in the future. The members would be the Senators most knowledgeable in each nominee's area of future responsibility, and the nomination hearing could help provide a systematic coverage of each country or functional subject in the scope of the subcommittee.

The chief disadvantage of the proposal is that it could lead to a decentralization that the committee has tried to avoid. In the Foreign Relations Committee, subcommittees have continued to have primarily a consultative role, and legislation has been dealt with by the full committee. Thus subcommittees have not developed into the independent entities that they have on occasion become in some House or Senate committees.

If the committee decided to delegate responsibility for holding hearings on nominations to the subcommittees, it could take certain steps to

minimize the danger of fragmentation. For example, it could make clear that any member could attend any hearing. It could view the consideration of nominations as a part of consultation with the executive branch and thus suitable for the consultative subcommittees, with voting on the nominee taking place in full committee.

E. ESTABLISH SENATE OFFICE ON APPOINTMENT INVESTIGATION

At the conclusion of a study of Federal regulatory agencies and processes, the Senate Committee on Government Operations (since renamed Governmental Affairs) recommended that the Senate give serious consideration to establishing an Office on Regulatory Appointment Investigations.[142] While that proposal related only to appointments to regulatory agencies and commissions, the basic concept could be applied to all nominations or to the nominations in any field in which the committee of jurisdiction agreed. Indeed, on September 8, 1977, Senators Charles Percy and Abraham Ribicoff, both members of the Government Operations Committee, introduced a resolution calling for a Senate Office on Nominations.[143] (Copy in appendix.) Common Cause also proposed such an office.[144]

A Senate office to assist with nominations might be particularly helpful to a committee with a large number of nominations to handle, such as the Foreign Relations Committee. A central investigative staff could provide an independent Senate check on the character of the nominee, leaving it to the committees to evaluate the findings and to explore questions of policy and substantive competence.

The function of the Office would be to investigate the nominee's background, integrity, and financial holdings that might create a conflict of interest, and report its findings, without any recommendations, to the committee to which the nomination was referred. The findings would remain confidential unless a majority of the relevant committee ordered otherwise. The Office would also obtain a financial disclosure statement and make it available for public inspection. The Office would not inquire into the nominee's position or opinions on policy matters; this would be the function of the committee of jurisdiction.

As proposed in S. Res. 258, the President *pro tempore* of the Senate would select the Director of the Office, after consultation with the majority and minority leaders, for a term of 3 years. The staff would be chosen on a non-partisan basis and limited in number. Nominations would be automatically referred to the Office at the same time as the committee of jurisdiction, and the Office would be required to report its findings to the committee of jurisdiction within 15 days unless the committee agreed to an extension. The Director of the Office, the Chairman and ranking minority member of the committee, and two committee staff members would be allowed access to investigative findings of the executive branch agency charged with the investigation.

A main advantage of such an Office would be its ability to provide a mechanism for an independent investigation or evaluation of the

[142] U.S. Senate. Committee on Governmental Affairs. Principal Recommendations and Findings of the Study on Federal Regulation, Volumes I–IV. 95th Congress, 1977–1978. Committee print, September 1979.
[143] S. Res. 258, 95th Congress.
[144] Adams, Bruce. The Senate Rubberstamp Machine, p. 45.

executive branch's investigation, and a central repository for information available for public inspection. Because of limited staff and the time pressures under which committees operate, they cannot always probe in depth the generally glowing reports from the executive branch on each nominee. A central office would relieve each committee of a time-consuming burden, yet leave it the decision on what recommendation to make to the Senate. The committee could then concentrate its investigation on policy related questions, such as the views of the nominee on policies, future actions and programs. It would also provide more consistency among the various committees in their treatment of nominations. The initial report of the Committee on Government Operations stated:

> The Senate investigations of nominees ought to be as professional as possible which is the reason we propose a centralized office. In order to be consistently thorough and even-handed, the investigations on nominees should be isolated from political pressures and considerations which are often brought to bear on the standing committees. In certain instances, we are aware of the fact that there have been suggestions that a confirmation be expedited or that a speedy hearing be held, both of which foreclose an opportunity for careful investigation.
>
> The inquiry ought to be conducted in an even-handed fashion for all appointees, and not intensified or deemphasized in accordance with a predisposition to either reject or approve. The Senate investigation should be a regular and routine requirement of confirmation in much the same way as the FBI checks are a prerequisite to nomination.[145]

The main argument against the proposal is that it would create an additional office. Critics contend that there is nothing a central nominations office could do that committees (with the help of the General Accounting Office on scrutinizing financial information), cannot already do if they wish. They fear it could lead to the duplication of investigations undertaken by the executive branch, and that it might delay the appointments process. Some speculate that it would not be acceptable to some committees or committee chairmen who fear any loss of control over the nominations in their jurisdiction.[146]

A main question would appear to be whether the Senate wants to centralize some of the work involved.

F. ABANDON COURTESY CALLS

At present, the State Department requests courtesy calls for all nominees with the chairman, the ranking minority members, and the chairman and the ranking minority member of the relevant subcommittee. At the beginning of the current administration, courtesy calls were requested with all members of the committee, but the sheer number of nominations now makes this impractical. While any member who might be interested in meeting a nominee may request such a call, few avail themselves of the opportunity because of the press of other items on their schedules.

Carl Marcy, a former Chief of Staff of the Senate Foreign Relations Committee, has proposed abandoning the practice of courtesy calls on Senators by nominees.[147] The informal practice could be ended

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[145] U.S. Senate. Committee on Government Operations. Study on Federal Regulation. Committee print, January 1977, p. 183.

[146] Hager, Barry M. Confirmation Process: Weaknesses Abound. Congressional Quarterly Weekly Report, Feb. 4, 1978 p. 298.

[147] Marcy, Carl. Nominees Shouldn't Pay Courtesy Calls on Senators. New York Times, July 29, 1981, p. A23.

if either the executive branch instructed nominees not to make such calls, or Senators adopted the practice of not receiving them, or both sides mutually agreed to stop the practice.

Mr. Marcy's chief complaint was that the practice corrupted the independent advice and consent function of the Senate by encouraging private discussion of issues that should be discussed only publicly. He suggested it was also degrading to nominees who could be pressured in a private meeting to discuss and take stands on controversial issues. During the courtesy call the nominee might suggest it would be awkward to be asked certain questions in public hearings, or a Senator might take the opportunity to voice particular interest in a matter within the scope of the nominee's future position. Marcy concluded, "In short, if the private conversation is social, it is unnecessary and time-consuming; if it is substantive, it is undesirable and should be held in public." [148]

The matter of what was said during a courtesy call became an issue in the case of Ernest Lefever, the nominee for Assistant Secretary of State for Human Rights who was rejected by the committee in 1981. The dispute centered on whether Mr. Lefever had said in the courtesy call that opposition to his nomination was Communist-inspired. Lefever said no; at least one Senator said otherwise.

The private meetings, Mr. Marcy contended, were also likely to lead to a Senator's being satisfied with the nominee and judging that therefore it was unnecessary to attend the hearings where issues would be publicly discussed. He cited as a case in point the nomination of General Edward L. Rowny to be chief negotiator with the Soviet Union on arms control. After General Rowny had made courtesy calls, the first day's hearing was attended by four members out of seventeen and the second day's by only one.

In addition to resolving questions of propriety, the abandonment of courtesy calls could save considerable time for committee and subcommittee chairmen and ranking minority members. Even if the calls take only fifteen minutes, they add up over the course of a year, in the case of the Foreign Relations Committee, to a large number of interruptions and many hours for Senators who already have huge time demands.

On the other side, proponents of the courtesy calls contend that any increase in communication between Members of Congress and the executive branch is to be encouraged, and that the establishment of a social relationship through a courtesy call is helpful in promoting consultation between the two branches. The State Department, for example, continues to consider courtesy calls useful. The Bureau of Congressional Relations considers them a positive factor in the appointment process, even after the admittedly troublesome results of the Lefever calls, which generally had a negative impact on the prospects of the candidate.[149] It may also be that some members prefer to explore certain topics outside the public hearings, or some Senators may wish to pursue at length issues in which other Senators may have a minimal interest.

[148] Ibid.
[149] Based on CRS conversation with Bureau official, Feb. 18, 1982.

G. LIMIT POLITICAL APPOINTMENTS

It has been suggested by some observers that the foreign affairs appointment process might be less onerous for the Senate if the number of noncareer appointments an administration could make were limited. Questions of substantive competence are more likely to arise in connection with noncareer nominees, as are questions about conflict of interest, which result from the more complex financial backgrounds of many noncareer appointees. Senator Charles Mathias, a member of the Foreign Relations Committee, for example, has long advocated a statutory limit on the percentage of nonprofessionals appointed to ambassadorial ranks as chiefs of mission. He introduced legislation in 1974, 1975, and 1976 to that effect, proposing first a 20 percent limitation, and in 1976, a 15 percent limitation. The latter effort, in an amended form which removed the specific percentage requirement, was included as a provision of Public Law 94–350:

> It is the sense of the Congress that a greater number of positions of ambassador should be occupied by career personnel in the Foreign Service.[150]

Section 304 (a) of the Foreign Service Act of 1980 relating to the appointment of ambassadors, states inter alia that "positions as chiefs of mission should normally be accorded to career members of the [Foreign] Service, though circumstances will warrant appointments from time to time of qualified individuals who are not career members of the Service" and that contributions to political campaigns should not be a factor in the appointment of chiefs of mission.[151]

On November 23, 1981, noting that 44 percent of President Reagan's ambassadorial appointments to date went to individuals outside the career service, Senator Mathias again introduced legislation to limit to 15 percent such appointments, in the form of S. 1886, an amendment to the 1980 Foreign Service Act.[152] The bill was then referred to the Foreign Relations Committee. At the time of this writing, no further action had been taken on this legislative proposal.

There are varying opinions on the practice of appointing noncareer ambassadors. While the arguments against such choices are familiar, even most critics will admit that there are some advantages to permitting such appointments. Although many non-career appointees appear inappropriate in background and training for the requirements of their jobs, the best political ambassadors—persons of the quality of an Averell Harriman or a David Bruce—are very good. They are not only knowledgeable and experienced leaders, but also have the kind of relationship with the President that facilitates effective policy making: easy access and mutual respect. Foreign governments are aware of these attributes and make better use of the ambassador as a contact point because of it.

At the same time, there are instances in which non-career appointees are neither qualified nor suitable in any sense other than the fact that they have been named to repay some kind of political obligation, either a campaign contribution or some other direct or indirect political

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[150] Senator Mathias in Congressional Record, Daily Edition, Nov. 23, 1981, p. S14019.
[151] Foreign Service Act of 1980 (Public Law 96–465), sec. 304(a)(2) and (a)(3).
[152] The American Foreign Service Association compiled new figures in March 1982 indicating that 48 of President Reagan's 100 ambassadorial appointees to date had been political, rather than career Foreign Service officers.

favor. It is possible that even the assumption that they "have the President's ear" may not necessarily be justified because an individual ambassador's political connection may be to a lower-level party official without direct access to the Chief Executive.

In any event, the situation might be improved if there were some kind of provision or requirement in law that a certain percentage of ambassadorial appointees be career Foreign Service officers.

H. ESTABLISH FORMAL CRITERIA FOR CONFIRMATION

Some analysts have suggested that there should be formal criteria established in law or rules that would have to be met by all presidential nominees. In 1977, for example, a study published by Common Cause made the point that in the past the Senate tended to base its confirmation judgment on the negative standard of whether or not the nominee was clearly disqualified to serve. The author of the study suggested that, in fact, *affirmative* standards for confirmation be met by all nominees:

> Nominees should be persons of high personal and professional integrity who have the administrative competency to responsibly carry out the duties of the offices to which they have been appointed. Nominees should be firmly committed to basic principles of government accountability. Nominees should have a clear commitment to enforce and implement the major laws and programs under their jurisdiction.[153]

Such standards could be provided for in law along the lines suggested in S. Res. 258, a bipartisan proposal introduced in 1977 by Senators Abraham Ribicoff and Charles H. Percy. Title II provided for amending the Senate rule on nominations by adding at the beginning:

> 1. When nominations shall be made by the President of the United States to the Senate, they shall, unless otherwise ordered, be referred to appropriate committees; and in reviewing nominations the Senate shall inquire as to the nominee's positive qualifications for the position for which he is being considered.
>
> 2. In determining whether to advise and consent to a nomination, the following general standards shall be applied by the Senate and its committees:
>
> (A) By reason of background, training, or experience, the nominee is affirmatively qualified for the office to which he or she has been nominated.
>
> (B) The personal and professional integrity of the nominee shall be taken into consideration, and whether the nominee should be disqualified due to conflicts of interest.
>
> (C) The nature and needs of the particular office to which the individual was nominated, the nominee's commitment to the enforcement of applicable statutes and regulations (in the case of an agency appointment) or to the administration of law (in the case of a judicial appointment), shall be taken into consideration.
>
> (D) In the case of a collegial body, the existing composition of that body, and whether or not members of a single sector or group are too heavily represented, shall be taken into consideration.
>
> (E) The nominee meets the statutory qualifications to hold the office to which he or she has been nominated.

If amendment of the Senate rules did not prove feasible, the Committee on Foreign Relations might also consider amending its own rules to establish clear criteria for confirmation. The Senate Committee on Governmental Affairs established the following:

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[153] Adams, Bruce. The Senate rubberstamp machine. Washington, Common Cause, 1977, pp. 63–64.

RULE 8. CONFIRMATION STANDARDS AND PROCEDURES

A. Standards. In considering a nomination, the Committee shall inquire into the nominee's experience, qualifications, suitability, and integrity to serve in the position to which he or she has been nominated. The Committee shall recommend confirmation, upon finding that the nominee has the necessary integrity and is affirmatively qualified by reason of training, education, or experience to carry out the functions of the office to which he or she was nominated.[164]

Yet even if such standards were to be adopted, additional mechanisms might have to be created to give them "teeth." For example, unless all nominees were required to testify under oath—an unusual requirement in the Foreign Relations Committee—they cannot be held legally accountable for any untruths or other misstatements they make during the confirmation hearing. On the other hand, it does not appear likely that the average nominee would intentionally misinform the committee while testifying at his own confirmation hearing. In any event, application of the criteria would remain a judgment of individual Senators.

Even if none of these were adopted, the committee might informally agree on criteria and ask the staff to organize their memoranda on nominees in such a way as to facilitate assessment of nominees against the criteria.

At any rate, clarification of the criteria to be considered for each nominee could help to contribute to the development of a more efficient confirmation process.

VII. CONCLUSION

The confirmation requirement provides the Senate with a valuable check on the quality of person that the President appoints to conduct foreign policy or represent the United States abroad. As the involvement of the United States in world affairs and the number of countries have increased, however, the volume of nominations submitted to the Senate in the foreign affairs field has become so large that it is no longer possible for Senators to give thorough consideration to each one. The dilemma is how to give adequate consideration to the nominations without spending an amount of time on them which is disproportionate in view of other foreign policy responsibilities, such as the approval of treaties, passage of legislation, and oversight of executive branch action.

Several approaches offer promise of improving response to this dilemma.

One approach is to regularly review the legal requirements of confirmation of specific positions, and to revise them as necessary. Confirmation of some positions of limited influence will be candidates for elimination in order to keep the number small enough to permit thorough consideration of the nominees of greatest moment to U.S. foreign affairs. Consideration might also be given to adding confirmation requirements for other positions to make sure the most important positions are included.

A second approach is to focus efforts on reducing the time spent by Senators on nominations by streamlining procedures or delegating

[164] Reproduced in U.S. Library of Congress, Congressional Research Service, Consideration of Presidential Nominees by Senate Committees [by] Judith H. Parris. Jan. 21, 1980. Report No. 80-305 GOV, p. 43.

some of the work. This might be done by (1) reducing the number of hearings on nominations; (2) establishing staff procedures, perhaps a central Office of Appointment Investigations, to examine the character and qualifications of nominees; and/or (3) abandoning the practice of courtesy calls;

The third approach is to focus on making time that is spent on nominations by Senators as productive and meaningful as possible. Adoption of clear standards and criteria for judging nominees would assist persons all along the line, both in the executive branch and the Senate, to determine the qualifications of particular individuals. Consultative subcommittee responsibility for hearings on nominees in their areas would dovetail the work in the consideration of nominees with general oversight responsibilities, allow an opportunity for Senators to acquaint future policymakers with their views, and lay the groundwork for continued consultation by providing an opportunity for executive officials to meet the Senators who are most specialized in their area.

The relative appeal of any—or any combination—of these approaches will vary with the values and goals of the individual observer. Taken singly or in combination, however, they suggest opportunities for enhancing the effectiveness and efficiency of Senate participation in the approval of foreign affairs-related nominees of the executive branch.

APPENDIX I

Chart Showing Legislative Requirements for Confirmation to Appointments in the Foreign Affairs Field

A. Appointments to positions in U.S. Government Foreign Affairs Agencies

Agency and position	*Authority*
Department of State Secretary of State Deputy Secretary of State Under Secretary of State for Political Affairs Under Secretary of State for Economic Affairs Under Secretary of State for Management Assistant Secretaries of State (13) Counselor of the Department of State Legal Adviser	Strengthening the organization and administration of the Department of State (Public Law 81–73), as amended (22 U.S.C. 2652 and 2653(a)): *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That there shall be in the Department of State in addition to the Secretary of State, a Deputy Secretary of State, an Under Secretary of State for Political Affairs, an Under Secretary of State for Economic Affairs, an Under Secretary of State for Management and thirteen Assistant Secretaries of State. Sec. 2. (a) The Secretary of State and the officers referred to in section 1 of this Act, as amended, shall be appointed by the President, by and with the advice and consent of the Senate. The Counselor of the Department of State and the Legal Adviser who are required to be appointed by the President, by and with the advice and consent of the Senate, shall rank equally with the Assistant Secretaries of State. Any such officer holding office at the time the provisions of this Act, as amended, become effective shall not be required to be reappointed by reason of the enactment of this Act, as amended.
Under Secretary for Security Assistance, Science and Technology	The Foreign Assistance Act of 1961 (Public Law 87–195) as amended; sec. 624(e) (22 U.S.C. 2384): In addition to the officers otherwise provided for in this section, the President shall appoint, by and with the advice and consent of the Senate, one officer for the purpose of coordinating security assistance programs. (Position elevated to Under Secretary by Sec. 403 of Public Law 92–226, 5 U.S.C. 5314, para. 9)

CHART SHOWING LEGISLATIVE REQUIREMENTS FOR CONFIRMATION TO APPOINTMENTS IN THE FOREIGN AFFAIRS FIELD—Continued

A. Appointments to positions in U.S. Government Foreign Affairs Agencies—Continued

Assistant Secretary for Oceans and International Environmental and Scientific Affairs	Public Law 93–126, as amended (22 U.S.C. 2655a): SEC. 9. (a) There is established within the Department of State a Bureau of Oceans and International Environmental and Scientific Affairs. In addition to the positions provided under the first section of the Act of May 26, 1949, as amended (22 U.S.C. 2652), there shall be an Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs, appointed by the President, by and with the advice and consent of the Senate, who shall be the head of the Bureau and who shall have responsibility for matters relating to oceans, environmental, scientific, fisheries, wildlife, and conservation affairs.
Assistant Secretary of State for International Narcotics Matters	Foreign Relations Authorization Act, Fiscal Year 1979. Public Law 95–426 (22 U.S.C. 2652a): SEC. 115. (a) There is established in the Department of State, in addition to the positions provided under the first section of the Act of May 26, 1949 (22 U.S.C. 2652), an Assistant Secretary of State for International Narcotics Matters, who shall be appointed by the President, by and with the advice and consent of the Senate. The Assistant Secretary shall be responsible for the overall coordination of the role of the Department of State in the international aspects of narcotics problems.
Assistant Secretary for Consular Affairs	Immigration and Naturalization Act of June 27, 1952 (Public Law 82–414), as amended. Confirmation requirement added by Migration and Refugee Assistance Act of 1962 (Public Law 87–51) 8 U.S.C. 1104(b): SEC. 104. (b) There is hereby established in the Department of State a Bureau of Security and Consular Affairs to be headed by an Assistant Secretary of State for Consular Affairs. The administrator shall be a citizen of the United States, qualified by experience, and shall maintain close liaison with the appropriate committees of Congress in order that they may be advised regarding the administration of this Act by consular officers. He shall be charged with any and all responsibility and authority in the administration of the Bureau and of this Act which are conferred on the Secretary of State as may be delegated to him by the Secretary of State or which may be prescribed by the Secretary of State. He shall also perform such other duties as the Secretary of State may prescribe.

Assistant Secretary of State for Human Rights and Humanitarian Affairs	Foreign Assistance Act of 1961, as amended by Public Law 95–105: SEC. 624(f)(1). There shall be in the Department of State an Assistant Secretary of State for Human Rights and Humanitarian Affairs who shall be responsible to the Secretary of State for matters pertaining to human rights and humanitarian affairs (including matters relating to refugees, prisoners of war, and members of the United States Armed Forces missing in action) in the conduct of foreign policy. The Secretary of State shall carry out his responsibility under section 502B of this Act through the Assistant Secretary.
United States Coordinator for Refugee Affairs with rank of Ambassador at Large	Refugee Act of 1980 (Public Law 96–212) (8 U.S.C. 1525): SEC. 301. (a) The President shall appoint, by and with the advice and consent of the Senate, a United States Coordinator for Refugee Affairs (hereinafter in this part referred to as the "Coordinator"). The Coordinator shall have the rank of Ambassador-at-Large.
Director General of the Foreign Service	Foreign Service Act of 1980 (Public Law 96–465) 22 U.S.C. 3928: SEC. 208. DIRECTOR GENERAL OF THE FOREIGN SERVICE.—There shall be a Director General of the Foreign Service, who shall be appointed by the President, by and with the advice and consent of the Senate, from among the career members of the Senior Foreign Service. The Director General shall assist the Secretary of State in the management of the Service and shall perform such functions as the Secretary of State may prescribe.
Inspector General of the Department of State and the Foreign Service	Foreign Service Act of 1980 (Public Law 96–465) 22 U.S.C. 3929: SEC. 209. INSPECTOR GENERAL.—(a)(1) There shall be an Inspector General of the Department of State and the Foreign Service, who shall be appointed by the President, by and with the advice and consent of the Senate, without regard to political affiliation from among individuals exceptionally qualified for the position by virtue of their integrity and their demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations, or their knowledge and experience in the conduct of foreign affairs. The Inspector General shall report to and be under the general supervision of the Secretary of State. Neither the Secretary of State nor any other officer of the Department shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpena during the course of any audit or investigation. The Inspector General shall periodically (at least every 5 years) inspect and audit the administration of activities and operations of each Foreign Service post and each bureau and other operating unit of the Department of State, and shall perform such other functions as the Secretary of State may prescribe, except that the Secretary of State shall not assign to the Inspector General any general program operating responsibilities.

CHART SHOWING LEGISLATIVE REQUIREMENTS FOR CONFIRMATION TO APPOINTMENTS IN THE FOREIGN AFFAIRS FIELD—Continued

A. Appointments to positions in U.S. Government Foreign Affairs Agencies—Continued

Chief of mission, ambassador at large, minister, career member of the Senior Foreign Service, or Foreign Service Officer, ambassador, career ambassador	Foreign Service Act of 1980 (Public Law 96-465) 22 U.S.C. 3942: SEC. 302. APPOINTMENTS BY THE PRESIDENT.—(a)(1) The President may, by and with the advice and consent of the Senate, appoint an individual as a chief of mission, as an ambassador at large, as a minister, as a career member of the Senior Foreign Service, or as a Foreign Service officer. (2)(A) The President may, by and with the advice and consent of the Senate, confer the personal rank of career ambassador upon a career member of the Senior Foreign Service in recognition of especially distinguished service over a sustained period. (B)(i) Subject to the requirement of clause (ii), the President may confer the personal rank of ambassador or minister on an individual in connection with a special mission for the President of a temporary nature not exceeding six months in duration. (ii) The President may confer such personal rank only if, prior to such conferral, he transmits to the Committee on Foreign Relations of the Senate a written report setting forth— (I) the necessity for conferring such rank, (II) the dates during which such rank will be held, (III) the justification for not submitting the proposed conferral of personal rank to the Senate as a nomination for advice and consent to appointment, and (IV) all relevant information concerning any potential conflict of interest which the proposed recipient of such personal rank may have with regard to the special mission. Such report shall be transmitted not less than 30 days prior to conferral of the personal rank of ambassador or minister except in cases where the President certifies in his report that urgent circumstances require the immediate conferral of such rank.

(C) An individual upon whom a personal rank is conferred under subparagraph (A) or (B) shall not receive any additional compensation solely by virtue of such personal rank.

(3) Except as provided in paragraph (2)(B) of this subsection or in clause 3, section 2, article II or the Constitution (relating to recess appointments), an individual may not be designated as ambassador or minister, or be designated to serve in any position with the title of ambassador or minister, without the advice and consent of the Senate.

(b) If a member of the Service is appointed to any position in the executive branch by the President, by and with the advice and consent of the Senate, or by the President alone, the period of service in that position by the member shall be regarded as an assignment under chapter 5 and the member shall not, by virtue of the acceptance of such assignment, lose his or her status as a member of the Service. A member of the Senior Foreign Service who accepts such an assignment may elect to continue to receive the salary of his or her salary class, to remain eligible for performance pay under chapter 4, and to receive the leave to which such member is entitled under subchapter I of chapter 63 of title 5, United States Code, as a member of the Senior Foreign Service, in lieu of receiving the salary and leave (if any) of the position to which the member is appointed by the President.

Recall of retired career member to a salary class higher than career member was serving at time of retirement

Foreign Service Act of 1980 (Public Law 96-465) 22 U.S.C. 3948:

SEC. 308. RECALL AND REEMPLOYMENT OF CAREER MEMBERS.—(a) Whenever the Secretary determines that the needs of the Service so require, the Secretary may recall any retired career member of the Service for active duty in the same personnel category as that member was serving at the time of retirement. A retired career member may be recalled under this section to any appropriate salary class or rate, except that a retired career member of the Senior Foreign Service may not be recalled to a salary class higher than the one in which the member was serving at the time of retirement unless appointed to such higher class by the President, by and with the advice and consent of the Senate.

(b) Former career members of the Service may be reappointed under section 302(a)(1) or 303, without regard to section 306, in a salary class which is appropriate in light of the qualifications and experience of the individual being reappointed.

CHART SHOWING LEGISLATIVE REQUIREMENTS FOR CONFIRMATION TO APPOINTMENTS IN THE FOREIGN AFFAIRS FIELD—Continued

A. Appointments to positions in U.S. Government Foreign Affairs Agencies—Continued

Commission of member of Foreign Service as a diplomatic or consular officer	Foreign Service Act of 1980 (Public Law 96-465) 22 U.S.C. 3952: SEC. 312. DIPLOMATIC AND CONSULAR COMMISSIONS.—(a) The Secretary of State may recommend to the President that a member of the Service who is a citizen of the United States be commissioned as a diplomatic or consular officer or both. The President may, by and with the advice and consent of the Senate, commission such member of the Service as a diplomatic or consular officer or both. The Secretary of State may commission as a vice consul a member of the Service who is a citizen of the United States. All official functions performed by a diplomatic or consular officer, including a vice consul, shall be performed under such a commission. (b) Members of the Service commissioned under this section may, in accordance with their commissions, perform any function which any category of diplomatic officer (other than a chief of mission) or consular officer is authorized by law to perform.
Promotions	Foreign Service Act of 1980 (Public Law 96-465) 22 U.S.C. 4001: SEC. 601. PROMOTIONS.—(a) Career members of the Senior Foreign Service are promoted by appointment under section 302(a) to a higher salary class in the Senior Foreign Service.
Foreign Service personnel of International Communications Agency, International Development Cooperation Agency, Foreign Agricultural Service, Department of Commerce	Foreign Service Act of 1980 (Public Law 96-465) 22 U.S.C. 3922: SEC. 202. OTHER AGENCIES UTILIZING THE FOREIGN SERVICE PERSONNEL SYSTEM.—(a)(1) The Director of the International Communication Agency and the Director of the United States International Development Cooperation Agency may utilize the Foreign Service personnel system with respect to their respective agencies in accordance with this Act. (2) The Secretary of Agriculture may utilize the Foreign Service personnel system in accordance with this Act—

	(A) with respect to personnel of the Foreign Agricultural Service, and (B) with respect to other personnel of the Department of Agriculture to the extent the President determines to be necessary in order to enable the Department of Agriculture to carry out functions which require service abroad. (3) The Secretary of Commerce may utilize the Foreign Service personnel system in accordance with this Act— (A) with respect to the personnel performing functions transferred to the Department of Commerce from the Department of State by Reorganization Plan Numbered 3 of 1979, and (B) with respect to other personnel of the Deparment of Commerce to the extent the President determines to be necessary in order to enable the Department of Commerce to carry out functions which require service abroad.
Agency for International Development	The Foreign Assistance Act of 1961 (Public Law 87–195) as amended, sec. 624(a) (22 U.S.C. 2384): The President may appoint, by and with the advice and consent of the Senate, twelve officers in the agency primarily responsible for administering part I * * * and in the selection of one of such persons due consideration shall be given to persons qualified as professional engineers.[1]
Officers responsible for administration (11 including the Administrator)	The Foreign Assistance Act of 1961 (Public Law 87–195) as amended, sec 624(c) (22 U.S.C. 2384): Any person who was appointed by and with the advice and consent of the Senate, to any statutory position authorized by any provision of law repealed by section 624(a) and who is serving in one of such positions at the time of transfer of functions pursuant to subsections (c) and (d) of section 621, may be appointed by the President to a comparable position authorized by subsection (a) of this section on the date of the establishment of the agency primarily responsible for administering part I, without further action by the Senate.

[1] Reorganization Plan No. 2 of 1979 abolished one of the positions.

CHART SHOWING LEGISLATIVE REQUIREMENTS FOR CONFIRMATION TO APPOINTMENTS IN THE FOREIGN AFFAIRS FIELD—Continued

A. Appointments to positions in U.S. Government Foreign Affairs Agencies—Continued

Overseas Private Investment Corporation	Foreign Assistance Act of 1961 (Public Law 87–195) as amended (22 U.S.C. 2193) :
8 Directors	SEC. 233 (b). BOARD OF DIRECTORS.—All powers of the Corporation shall vest in and be exercised by or under the authority of its Board of Directors ("the Board") which shall consist of fifteen Directors, including the Chairman, with eight Directors consituting a quorum for the transaction of business. The Administrator of the Agency for International Development shall be the Chairman of the Board, ex-officio. The United States Trade Representative shall be the Vice Chairman of the Board, ex officio, except that the United States Trade Representative may designate the Deputy United States Trade Representative to serve as Vice Chairman of the Board in place of the United States Trade Representative. Eight Directors (other than the President of the Corporation, appointed pursuant to subsection (c) who shall serve as a Director ex officio) shall be appointed by the President of the United States, by and with the advice and consent of the Senate, and shall not be officials or employees of the Government of the United States. At least two of the eight Directors appointed under the preceding sentence shall be experienced in small business, one in organized labor, and one in cooperatives. Each such Director shall be appointed for a term of no more than three years. The terms of no more than three such Directors shall expire in any one year. Such Directors shall serve until their successors are appointed and qualified and may be reappointed. The other Directors shall be officials of the Government of the United States, including an official of the Department of Labor, designated by and serving at the pleasure of the President of the United States.
President	SEC. 233(c) President of the Corporation. The President of the Corporation shall be appointed by the President of the United States, by and with the advice and consent of the Senate, and shall serve at the pleasure of the President. In making such appointment, the President shall take into account private business experience of the appointee. The President of the Corporation shall be its Chief Executive Officer and responsible for the operations and management of the Corporation, subject to bylaws and policies established by the Board.

Executive Vice President	SEC. 233(d) Officers and Staff. The Executive Vice President of the Corporation shall be appointed by the President of the United States, by and with the advice and consent of the Senate, and shall serve at the pleasure of the President. Other officers, attorneys, employees, and agents shall be selected and appointed by the Corporation, and shall be vested with such powers and duties as the Corporation may determine. . . .
Inter-American Foundation 7 Members of Board of Directors	Foreign Assistance Act of 1969, (Public Law 91–175), Part IV, Inter-American Foundation Act as amended (22 U.S.C. 290f) : SEC. 401(g) The management of the Foundation shall be vested in a board of directors (hereafter in this section referred to as the "Board") composed of seven members appointed by the President, by and with the advice and consent of the Senate, one of whom he shall designate to serve as Chairman of the Board and one of whom he shall designate to serve as Vice Chairman of the Board. Four members of the Board shall be appointed from private life. Three members of the Board shall be appointed from among officers or employees of agencies of the United States concerned with inter-American affairs. Members of the Board shall be appointed for terms of six years, except that of the members first appointed two shall be appointed for terms of two years and two shall be appointed for terms of four years, as designated by the President at the time of their appointment. A member of the Board appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term; but upon the expiration of his term of office a member shall continue to serve until his successor is appointed and shall have qualified. Members of the Board shall be eligible for reappointment.
Peace Corps Director and Deputy Director	The Peace Corps Act (Public Law 87–293) as amended, sec. 4(a) : The President may appoint, by and with the advice and consent of the Senate, a Director of the Peace Corps and a Deputy Director of the Peace Corps.

CHART SHOWING LEGISLATIVE REQUIREMENTS FOR CONFIRMATION TO APPOINTMENTS IN THE FOREIGN AFFAIRS FIELD—Continued

A. Appointments to positions in U.S. Government Foreign Affairs Agencies—Continued

U.S. Arms Control and Disarmament Agency	Arms Control and Disarmament Act (Public Law 87–297) as amended, section 22 (22 U.S.C. 2562) :
Director	The Agency shall be headed by a Director, who shall serve as the principal adviser to the Secretary of State, the National Security Council, and the President on arms control and disarmament matters. In carrying out his duties under this Act the Director shall, under the direction of the Secretary of State, have primary responsibility within the Government for arms control and disarmament matters, as defined in this Act. He shall be appointed by the President, by and with the advice and consent of the Senate. No person serving on active duty as a commissioned officer of the Armed Forces of the United States may be appointed Director.
Deputy Director	Arms Control and Disarmament Act (Public Law 87–297) as amended, section 23 (22 U.S.C. 2563) :
	A Deputy Director of the Agency shall be appointed by the President, by and with the advice and consent of the Senate. The Deputy Director shall perform such duties and exercise such powers as the Director may prescribe. He shall act for, and exercise the powers of, the Director during his absence or disability or during a vacancy in said office. No person serving on active duty as a commissioned officer of the Armed Forces of the United States may be appointed Deputy Director.
Assistant Directors (4)	Arms Control and Disarmament Act (Public Law 87–297) as amended, section 24 (22 U.S.C. 2564) :
	Not to exceed four Assistant Directors may be appointed by the President, by and with the advice and consent of the Senate. They shall perform such duties and exercise such powers as the Director may prescribe.

Special Representative for Arms Control and Disarmament Negotiations	Arms Control and Disarmament Act as amended by Public Law 95–108 (22 U.S.C. 2567) : SPECIAL REPRESENTATIVE SEC. 27 The President may appoint, by and with the advice and consent of the Senate, a Special Representative for Arms Control and Disarmament Negotiations who shall perform such duties and exercise such powers (under the direction of the President and the Secretary of State, acting through the Director) as the Director may prescribe with respect to international arms control and disarmament negotiations and matters relating thereto.
General Advisory Committee (no more than 15)	Arms Control and Disarmament Act (Public Law 87–297) as amended, section 26 (22 U.S.C. 2566) : The President, by and with the advice and consent of the Senate, may appoint a General Advisory Committee of not to exceed fifteen members to advise the Director on arms control and disarmament policy and activities. The President shall designate one of the members as Chairman. The members of the committee may receive the compensation and reimbursement for expenses specified for consultants by section 41(d) of this Act. The Committee shall meet at least twice each year. It shall from time to time advise the President, the Secretary of State and the Disarmament Director respecting matters affecting arms control, disarmament, and world peace.
International Communication Agency	Reorganization Plan No. 2 of 1977, October 11, 1977 :
Director	SECTION 2. DIRECTOR The Agency shall be headed by a Director (the "Director"), who shall serve as the principal advisor to the President, the National Security Council, and the Secretary of State on the functions vested in the Director. The Director shall report to the President and the Secretary of State. Under the direction of the Secretary of State, the Director shall have primary responsibility within the Government for the exercise of the functions vested in the Director. The Director shall be appointed by the President, by and with the advice and consent of the Senate, and shall be entitled to receive compensation at the rate now or hereafter prescribed by law for Level II of the Executive Schedule.

CHART SHOWING LEGISLATIVE REQUIREMENTS FOR CONFIRMATION TO APPOINTMENTS IN THE FOREIGN AFFAIRS FIELD—Continued

A. Appointments to positions in U.S. Government Foreign Affairs Agencies—Continued

Deputy Director	SECTION 3. DEPUTY DIRECTOR A Deputy Director shall be appointed by the President, by and with the advice and consent of the Senate. The Deputy Director shall act for, and exercise the powers of, the Director during the Director's absence or disability or during a vacancy in said office and, in addition, shall perform such duties and exercise such powers as the Director may from time to time prescribe. The Deputy Director shall be entitled to receive compensation at the rate now or hereafter prescribed by law for Level III of the Executive Schedule.
Associate Directors (4)	SECTION 4. ASSOCIATE DIRECTORS The President, by and with the advice and consent of the Senate, may appoint four Associate Directors, who shall perform such duties and exercise such powers as the Director may from time to time prescribe. One Associate Director shall be known as the Associate Director for Educational and Cultural Affairs and one Associate Director shall be known as the Associate Director for Broadcasting. Each Associate Director shall be entitled to receive compensation at the rate now or hereafter prescribed by law for Level IV of the Executive Schedule.
Foreign Service Information Officers	Foreign Service Act of 1980 (Public Law 96–465), sec. 102 (12)(b) (22 U.S.C. 3902): References in this Act or any other law to "Foreign Service officers" shall, with respect to the International Communication Agency, be deemed to refer to Foreign Service information officers. Foreign Service Act of 1980 (Public Law 96–465), sec. 302 (a)(1) (22 U.S.C. 3942): APPOINTMENTS BY THE PRESIDENT.—(a)(1) The President may, by and with the advice and consent of the Senate, appoint an individual as . . . a career member of the Senior Foreign Service, or as a Foreign Service officer.

Board for International Broadcasting (Voting members (5))	Board for International Broadcasting Act of 1973 (Public Law 93–129) Sec. 3 (22 U.S.C. 2872): (b)(1) COMPOSITION OF BOARD.—The Board shall consist of seven members, two of whom shall be an ex officio members. The President shall appoint, by and with the advice and consent of the Senate, five voting members, one of whom he shall designate as chairman. Not more than three of the members of the Board appointed by the President shall be of the same political party. The chief operating executive and the chairman of the Board of Directors of RFE/RL, Incorporated, shall be ex officio members of the Board and shall participate in the activities of the Board, but shall not vote in the determinations of the Board. (2) SELECTION.—Members of the Board appointed by the President shall be citizens of the United States who are not concurrently regular full-time employees of the United States Government. Such members shall be selected by the President from among Americans distinguished in the fields of foreign policy or mass communications. (3) TERM OF OFFICE OF PRESIDENTIALLY APPOINTED MEMBERS.—In appointing the initial voting members of the Board, the President shall designate three of the members appointed by him to serve for a term of three years and two members to serve for a term of two years. Thereafter, the term of office of each member of the Board so appointed shall be three years. The President shall appoint, by and with the advice and consent of the Senate, members to fill vacancies occurring prior to the expiration of a term, in which case the members so appointed shall serve for the remainder of such term. Any member whose term has expired may serve until his successor has been appointed and qualified.
United States Advisory Commission on Public Diplomacy (9 members)	Mutual Educational and Cultural Exchange Act of 1961 (Public Law 87–256), as amended sec. 106(b)(2) 22 U.S.C. 2456: The Commission shall consist of nine members, who shall be appointed by the President, by and with the advice and consent of the Senate. Members of the Commission shall be appointed on a non-partisan basis.
U.S. Advisory Commission on Information (5 members)	United States Information and Educational Exchange Act of 1948 (Public Law 80–402), as amended, sec. 602: Each Commission shall consist of five members, not more than three of whom shall be from any one political party. Members shall be appointed by the President, by and with the advice and consent of the Senate. No person holding any compensated Federal or State office shall be eligible for appointment.

CHART SHOWING LEGISLATIVE REQUIREMENTS FOR CONFIRMATION TO APPOINTMENTS IN THE FOREIGN AFFAIRS FIELD—Continued

A. Appointments to positions in U.S. Government Foreign Affairs Agencies—Continued

Central Intelligence Agency[2]	The Central Intelligence Agency Act of 1949 (Public Law 81–110; renumbered July 7, 1958; Public Law 85–507), as amended (50 U.S.C. 403):
Director and Deputy Director	There is established under the National Security Council a Central Intelligence Agency with a Director of Central Intelligence who shall be head thereof, and with a Deputy Director of Central Intelligence who shall act for, and exercise the powers of, the Director during his absence or disability. The Director and the Deputy Director shall be appointed by the President, by and with the advice and consent of the Senate, from among the commissioned officers of the armed services, whether in an active or retired status, or from among individuals in civilian life: Provided, however, That at no time shall the two positions of the Director and Deputy Director be occupied simultaneously by officers of the armed services, whether in an active or retired status.
National Security Council	National Security Act of 1947 (P.L. 80–253), as amended, sec. 101(a) (50 U.S.C. 402):
Secretaries and Under-Secretaries of executive and military departments other than Secretary of State and Secretary of Defense when appointed to serve on the Council	The Council shall be composed of: (1) the President; (2) the Vice President; (3) the Secretary of State; (4) the Secretary of Defense; (5) . . .; (6) . . .; (7) the Secretaries and Under Secretaries of other executive departments and of the military departments, . . . when appointed by the President by and with the advice and consent of the Senate, to serve at his pleasure.
Export-Import Bank	Export-Import Bank of 1945, Public Law 79–173, as amended, sec. 3(b):
President of the Bank and Vice President of the Bank	There shall be a President of the Export-Import Bank of the United States, who shall be appointed by the President of the United States by and with the advice and consent of the Senate, who shall receive a salary at the rate of $40,000 per annum,[3] and who shall serve as chief executive officer of the Bank. There shall be a First Vice President of the Bank, who shall be appointed by the President of the United States by and with the advice and consent of the Senate, who shall receive a salary at the rate of $38,500 per annum,[3] who shall serve as President of the Bank during the absence or disability of or in the event of a vacancy in the office of President of the Bank, and who shall at other times perform such functions as the President of the Bank may from time to time prescribe.

Board of Directors (3 additional members)	Export-Import Bank of 1945, as amended, sec. 3(c): There shall be a Board of Directors of the Bank consisting of the President of the Export-Import Bank of the United States who shall serve as Chairman, the First Vice President who shall serve as Vice Chairman, and three additional persons appointed by the President of the United States by and with the advice and consent of the Senate. Of the five members of the Board, not more than three shall be members of any one political party.
Foreign Claims Settlement Commission	Reorganization Plan No. 1 of 1954, sec. 1 *see also*, International Claims Settlement Act of 1949, (Public Law 81–455), as amended:
Commission members (3)	Establishment of Commission. There is hereby established the Foreign Claims Settlement Commission of the United States, hereinafter referred to as the Commission. The Commission shall be composed of three members, who shall each be appointed by the President by and with the advice and consent of the Senate, hold office during the pleasure of the President, and receive compensation at the rate of $15,000 per annum.[3] The President shall from time to time designate one of the members of the Commission as the Chairman of the Commission, hereinafter referred to as the Chairman. Two members of the Commission shall constitute a quorum for the transaction of the business of the Commission.
Special Representative for Trade Negotiations Special Representative, Ambassador Extraordinary and Plenipotentiary[4] Deputy Special Representative for Trade Negotiations, (2)[4] with rank of Ambassador	Trade Act of 1974, as amended (Public Law 93–16) Sec. 141(b)(1) and (2) 19 U.S.C. 2171(b): (b)(1) The Office shall be headed by the Special Representative for Trade Negotiations who shall be appointed by the President, by and with the advice and consent of the Senate. As an exercise of the rulemaking power of the Senate, any nomination of the Special Representative for Trade Negotiations submitted to the Senate for confirmation, and referred to a committee, shall be referred to the Committee on Finance. The Special Representative for Trade Negotiations shall hold office at the pleasure of the President, shall be entitled to receive the same allowances as a chief of mission, and shall have the rank of Ambassador Extraordinary and Plenipotentiary. (2) There shall be in the Office two Deputy Special Representatives for Trade Negotiations who shall be appointed by the President, by and with the advice and consent of the Senate. As an exercise of the rulemaking power of the Senate, any nomination of a Deputy Special Representative submitted to the Senate for confirmation, and referred to a committee, shall be referred to the Committee on Finance. Each Deputy Special Representative for Trade Negotiations shall hold office at the pleasure of the President and shall have the rank of Ambassador.

[3] Nominations for the Central Intelligence Agency posts are referred to the Senate Select Committee on Intelligence.
[3] Salary subsequently increased by Federal executive pay legislation.
[4] Nominations referred to Committee on Finance.

CHART SHOWING LEGISLATIVE REQUIREMENTS FOR CONFIRMATION TO APPOINTMENTS IN THE FOREIGN AFFAIRS FIELD—Continued

B. Appointments to represent U.S. in international organizations

International organization and position	*Authority*
United Nations	United Nations Participation Act of 1945 (Public Law 79–264) as amended, sec. 2(a) 22 U.S.C. 287a:
Representative[5] Ambassador Extraordinary and Plenipotentiary	The President, by and with the advice and consent of the Senate, shall appoint a representative of the United States to the United Nations who shall have the rank and status of Ambassador Extraordinary and Plenipotentiary and shall hold office at the pleasure of the President. Such representative shall represent the United States in the Security Council of the United Nations and may serve ex officio as representative of the United States in any organ, commission, or other body of the United Nations other than specialized agencies of the United Nations, and shall perform such other functions in connection with the participation of the United States in the United Nations as the President may, from time to time, direct.
Additional representatives to represent the United States in United Nations organs created with respect to nuclear energy or disarmament, and other organs including the Security Council, the Economic and Social Council, and the Trusteeship Council (Deputy U.S. Representative; Deputy U.S. Representative to the Security Council; U.S. Representative to Economic and Social Council; U.S. Representative to Trusteeship Council)	United Nations Participation Act of 1945 (Public Law 79–264) as amended 22 U.S.C. 287b: SEC. 2(b) The President, by and with the advice and consent of the Senate, shall appoint additional persons with appropriate titles, rank and status to represent the United States in the organs of the United Nations and in such organs, commissions, or other bodies as may be created by the United Nations with respect to nuclear energy or disarmament (control and limitation of armament). Such persons shall serve at the pleasure of the President and subject to the direction of the Representative of the United States to the United Nations. They shall, at the direction of the Representative of the United States to the United Nations, represent the United States in any organ, commission, or other body of the United Nations, including the Security Council, the Economic and Social Council and the Trusteeship Council, and perform such functions as the Representative of the United States is authorized to perform in connection with the participation of the United States in the United Nations. Any Deputy Representative or any other officer holding office at the time the provisions of this Act as amended, become effective shall not be required to be reappointed by reason of the enactment of this Act, as amended.

Additional Representatives to represent the United States in United Nations organs created with respect to nuclear energy or disarmament, and other organs including the Security Council, the Economic and Social Council, and the Trusteeship Council	22 U.S.C. d: SEC. 2(d) The President may also appoint from time to time such other persons as he may deem necessary to represent the United States in organs and agencies of the United Nations. The President may, without the advice and consent of the Senate, designate any officer of the United States to act without additional compensation as the representative of the United States in either the Economic and Social Council or the Trusteeship Council (1) at any specified session thereof where the position is vacant or in the absence or disability of the regular representative or (2) in connection with a specified subject matter at any specified session of either such Council in lieu of the regular representative. The President may designate any officer of the Department of State, whose appointment is subject to confirmation by the Senate, to act, without additional compensation, for temporary periods as the representative of the United States in the Security Council of the United Nations in the absence or disability of the representatives provided for under section 2(a) and (b) or in lieu of such representatives in connection with a specified subject matter.
Senior Members of the Military Staff Committee	10 U.S.C. 711: The President, by and with the advice and consent of the Senate, may appoint an officer of the Army, an officer of the Navy or the Marine Corps, and an officer of the Air Force, as senior members of the Military Staff Committee of the United Nations. An officer so appointed has the grade of lieutenant general or vice admiral, as the case may be, while serving under that appointment.
Representatives in General Assembly (5) Alternates	United Nations Participation Act of 1945 (Public Law 79–294), as amended, sec. 2(c) 22 U.S.C. 287(c): The President, by and with the advice and consent of the Senate, shall designate from time to time to attend a specified session or specified sessions of the General Assembly of the United Nations not to exceed five representatives of the United States and such number of alternates as he may determine consistent with the rules of procedure of the General Assembly. One of the representatives shall be designated as the senior representative.

[5] Representative to the U.N. usually serves as Chairman of Delegation to General Assembly in absence of the Secretary of State.

CHART SHOWING LEGISLATIVE REQUIREMENTS FOR CONFIRMATION TO APPOINTMENTS IN THE FOREIGN AFFAIRS FIELD—Continued

B. Appointments to represent U.S. in international organizations—Continued

International organizations and position	*Authority*
Representatives to European Office of the United Nations and Other International Organizations	United Nations Participation Act of 1945 (Public Law 79–294), as amended, sec. 2(e) 22 U.S.C. 287(e): The President, by and with the advice and consent of the Senate, shall appoint a representative of the United States to the European office of the United Nations with appropriate rank and status who shall serve at the pleasure of the President and subject to the direction of the Secretary of State, represent the United States at the European office of the United Nations, and perform such other functions there in connection with the participation of the United States in international organizations as the Secretary of State may, from time to time, direct.
High Commissioner for the Trust Territory of the Pacific Islands[6]	Public Law 90–16, To amend the Act of June 30, 1954, as amended, providing for the continuance of civil government for the Trust Territory of the Pacific Islands, and for other purposes. Sec. 2: Any appointment hereafter made to the office of the High Commissioner of the Trust Territory of the Pacific Islands shall be made by the President by and with the advice and consent of the Senate.
UNESCO	Joint Resolution Providing for Membership and Participation by the United States in the United Nations Educational, Science, and Cultural Organization (Public Law 79–565), as amended (22 U.S.C. 287n):
General Conference Representatives (5) and Alternates (5)	The President by and with the consent of the Senate shall designate from time to time to attend a specified session or specified sessions of the General Conference of the Organization not to exceed five representatives of the United States and such number of alternates not to exceed five as he may determine consistent with rules of procedure of the General Conference: *Provided, however*, That each such representative and each such alternate must be an American citizen. One of the representatives shall be designated as the senior representative. Such representatives and alternates shall each be entitled to receive compensation at such rates provided for Foreign Service officers in the schedule contained in section 867 of this title, as the President may determine, for such periods as the President may specify, except that no Member of the Senate or House of Representatives or

officer of the United States who is designated under this section as a representative of the United States or as an alternate to attend any specific session or specified sessions of the General Conference shall be entitled to receive such compensation. Whenever a representative of the United States is elected by the General Conference to serve on the Executive Board, or is elected President of the General Conference and thus becomes an ex officio adviser to the Executive Board, under provisions of article V of the constitution of the Organization, the President may extend the above provisions for compensation to such representative during periods of service in connection with the Executive Board.

World Health Organization
Representative of U.S. serving on Executive Board

Public Law 80–643, as amended (22 U.S.C. 290a) :

The President shall designate from time to time to attend a specified session or specified sessions of the World Health Assembly of the Organization not to exceed three delegates of the United States and such number of alternates as he may determine consistent with the rules of procedure of the World Health Assembly. One of the delegates shall be designated as the chief delegate. Whenever the United States becomes entitled to designate a person to serve on the Executive Board of the Organization, under article 24 of the constitution of the Organization, the President shall designate a representative of the United States, by and with the advice and consent of the Senate, and may designate not to exceed one alternate to attend sessions of the Executive Board. Such representative must be a graduate of a recognized medical school and have spent not less than three years in active practice as a physician or surgeon. Such representative and any such alternate shall each be entitled to receive compensation at one of the rates provided by section 867 of this title, for such period or periods as the President may specify, except that no Member of the Senate or House of Representatives or officer of the United States who is thus designated shall be entitled to receive such compensation : *Provided*, That no person shall serve as such representative, delegate, or alternate until such person has been investigated as to loyalty and security by the Civil Service Commission.

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[6] This appointment is referred to the Interior and Insular Affairs Committee.

APPENDIX II

Rule XXXI of Standing Rules of the Senate [1]

EXECUTIVE SESSION—PROCEEDINGS ON NOMINATIONS

1. When nominations shall be made by the President of the United States to the Senate, they shall, unless otherwise ordered, be referred to appropriate committees; and the final question on every nomination shall be, "Will the Senate advise and consent to this nomination?" which question shall not be put on the same day on which the nomination is received, nor on the day on which it may be reported by a committee, unless by unanimous consent.

2. All business in the Senate shall be transacted in open session, unless the Senate as provided in rule XXI by a majority vote shall determine that a particular nomination, treaty, or other matter shall be considered in closed executive session, in which case all subsequent proceedings with respect to said nomination, treaty, or other matter shall be kept secret: *Provided*, That the injunction of secrecy as to the whole or any part of proceedings in closed executive session may be removed on motion adopted by a majority vote of the Senate in closed executive session: *Provided further*, That any Senator may make public his vote in closed executive session.

3. When a nomination is confirmed or rejected, any Senator voting in the majority may move for a reconsideration on the same day on which the vote was taken, or on either of the next two days of actual executive session of the Senate; but if a notification of the confirmation or rejection of a nomination shall have been sent to the President before the expiration of the time within which a motion to reconsider may be made, the motion to reconsider shall be accompanied by a motion to request the President to return such notification to the Senate. Any motion to reconsider the vote on a nomination may be laid on the table without prejudice to the nomination, and shall be a final disposition of such motion.

4. Nominations confirmed or rejected by the Senate shall not be returned by the Secretary to the President until the expiration of the time limited for making a motion to reconsider the same, or while a motion to reconsider is pending unless otherwise ordered by the Senate.

5. When the Senate shall adjourn or take a recess for more than thirty days, all motions to reconsider a vote upon a nomination which has been confirmed or rejected by the Senate, which shall be pending at the time of taking such adjournment or recess, shall fall; and the

[1] U.S. Congress. Senate. Standing Rules of the Senate (Pursuant to the Adoption of S. Res. 274 and S. Res. 389, 96th Cong., Nov. 14, 1979, and Mar. 25, 1980, respectively) and Congressional Budget and Impoundment Control Act of 1974, as amended. Rules as of May 8, 1981. Sen. Doc. No. 97–10.

Secretary shall return all such nominations to the President as confirmed or rejected by the Senate, as the case may be.

6. Nominations neither confirmed nor rejected during the session at which they are made shall not be acted upon at any succeeding session without being again made to the Senate by the President; and if the Senate shall adjourn or take a recess for more than thirty days, all nominations pending and not finally acted upon at the time of taking such adjournment or recess shall be returned by the Secretary to the President, and shall not again be considered unless they shall again be made to the Senate by the President.

7. (a) The Official Reporters shall be furnished with a list of nominations to office after the proceedings of the day on which they are received, and a like list of all confirmations and rejections.

(b) All nominations to office shall be prepared for the printer by the Official Reporter, and printed in the Congressional Record, after the proceedings of the day in which they are received, also nominations recalled, and confirmed.

(c) The Secretary shall furnish to the press, and to the public upon request, the names of nominees confirmed or rejected on the day on which a final vote shall be had, except when otherwise ordered by the Senate.

APPENDIX III

Biographical and Financial Information Requested of Nominees By Senate Foreign Relations Committee

A. BIOGRAPHICAL INFORMATION

(The information requested in Part A is not treated as confidential and may be released publicly.)

1. Name (Include any former names used)_____

_____

2. Address—list current legal residence and mailing address_____

_____

3. Date and Place of Birth_____

_____

4. Marital Status (Include maiden name of wife/husband)_____

_____

5. Names and ages of children_____

_____

6. Education—list institution(s), dates attended, degree(s) received and date(s) degree(s) granted:

_____

7. Employment record—List all jobs held since college, including the title or description of job, name of employer, location, and dates of inclusive employment.

8. Government experience—List any experience in, or association with, Federal, state or local governments, including any advisory, consultative, honorary or other part-time service or positions.

9. Honors and Awards—List all scholarships, fellowships, honorary degrees, honorary society memberships, and any other special recognitions for outstanding service or achievements.

10. Foreign Languages—Spoken: _____

_____

Written: _____

Oral/Reading Comprehension: _____

_____

11. Published Writings—List the titles, publishers and dates of books, articles, reports and other published materials you have written.

12. Speeches—Provide the Committee with a copy of any formal speeches you have delivered during the last two years which you have reduced to writing or which have been transcribed and which are on topics relevant to the position for which you have been nominated.

13. Are there any factors, other than the information provided above, which particularly qualify you for the position to which you have been nominated?

B. FINANCIAL DATA

All information requested under this heading must be provided for yourself, your spouse, and your dependents. The financial statement need not be certified unless so required by the Chairman. (This information contained in Parts B, C. D and E herein will not be published in the record of the hearing on your nomination, but it will be retained in the Committee files on a confidential basis.)

1. Are you currently in default or have you been in default during the past 12 months on any liabilities? If so, please provide details.

2. Provide the identity of and a description of the nature of any interest in an option (other than one in a stock or commodity), mineral lease, copyright or patent held, directly or indirectly, during the past 12 months and indicate which, if any, have been divested and the date of divestment.

3. Provide a description of any fiduciary responsibility or power of attorney which you hold for or on behalf of any other person.

4. List all gifts exceeding $1,000 received by you, your spouse and your dependents during each of the last three years. Gifts made by members of your immediate family and/or dependents need not be included in this listing.

5. Political affiliations and activities—List all offices with a political party or any public office for which you have been a candidate. List all memberships and offices held in or financial contributions of $1,000 or more and services rendered to all political parties or election committee during the last five years.

6. Do you consent to provide the Committee with copies of your Federal income tax returns for the past three years if requested? Yes ____ No ____ These documents will be made available only to Senators and a staff person designated by the Chairman and Ranking Member. They will not be available for public inspection.

7. Have your Federal or State tax returns been the subject of any audit, investigation or inquiry at any time? If so, please provide details, including outcome.

C. FUTURE EMPLOYMENT RELATIONSHIPS

1. If you do not intend to sever all connections with your present employers, business firms, business associations or business organizations in the event you are confirmed by the Senate, please explain.

2. If you have any commitment or agreements to pursue outside employment, with or without compensation, during your service with the Government, please explain.

3. Do you have any commitments or agreements after completing Government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization other than those listed in the Office of Government Ethics Financial Disclosure Report (Form 278)? If so, please explain.

4. Has anybody made an offer to employ your services in any capacity after you leave Government service? If so, please explain?

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

D. POTENTIAL CONFLICTS OF INTEREST

(Please note that not only your financial interests, but those of your spouse and minor children and affiliated organizations, can present a conflict of interest. See 18 U.S.C. 208, a copy of which is attached.)

1. During the past five years, have you received any compensation or personally been involved in any financial transaction with a foreign government or interest? If so, please explain.

2. Describe briefly any lobbying activity during the past ten years, other than in an official Government capacity, in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy. (Include as "lobbying activity": activity performed as a representative or agent of another individual or of an organization, which involves direct communication with Congressional or agency officials or employees. Activity directed at the administration and execution of law or public policy should be considered "lobbying activity" if it aims at influencing agency action in quasi-legislative proceedings, such as rule-making or rate-making, or other general policy determinations.)

3. Describe any business relationship, dealing or financial transaction which you have had during the last five years, whether for yourself, on behalf of a client, or acting as an agent, which you believe may result in or constitute a potential conflict of interest in the position to which you have been nominated.

E. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee or other professional group? If so, provide details.

2. Have you ever been investigated, arrested, or charged or held by any Federal, state or other law enforcement authority for violation of any Federal, state, county or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details.

3. Have you ever been convicted (including pleas of guilty or nolo contendere) of any criminal violation other than a minor traffic offense? If so, provide details.

4. Are you presently or have you ever been a party in interest in any pending administrative agency proceeding or civil litigation? If so, provide details.

5. Has any business of which you are or were an officer been involved as a party in interest in any administrative agency proceeding or civil litigation relevant to the position to which you have been nominated? If so, provide details. (With respect to a business of which you are or were an officer, you need only consider proceedings and litigation that occurred while you were an officer of that business.)

6. Have you ever been a registered agent of a foreign government or otherwise represented a foreign government or interest? If so, provide details.

7. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

AFFIDAVIT

I, _____, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

_____ _____
(Date) (Name)

_____
(Notary)

18 U.S.C. 208

§ *208. Acts affecting a personal financial interest*

(a) Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, a Federal Reserve bank director, officer, or employee, or of the District of Columbia, including a special Government employee, participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest—

Shall be fined not more than $10,000, or imprisoned not more than two years, or both.

(b) Subsection (a) hereof shall not apply (1) if the officer or employee first advises the Government official responsible for appointment to his position of the nature and circumstances of the judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other

particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee, or (2) if, by general rule or regulation published in the Federal Register, the financial interest has been exempted from the requirements of clause (1) hereof as being too remote or too inconsequential to affect the integrity of Government officers' or employees' services. In the case of class A and B directors of Federal Reserve banks, the Board of Governors of the Federal Reserve System shall be the Government official responsible for appointment.

As amended Pub. L. 95–188, Title II, § 205, Nov. 16, 1977, 91 Stat. 1388.

CHART SHOWING LEGISLATIVE REQUIREMENTS FOR CONFIRMATION TO APPOINTMENTS IN THE FOREIGN AFFAIRS FIELD—Continued

B. Appointments to represent U.S. in international organizations—Continued

International Atomic Energy Agency	The IAEA Participation Act (Public Law 85–177), as amended (22 U.S.C. 2021a) :
Representative, Deputy Representative	The President, by and with the advice and consent of the Senate, shall appoint a representative and a deputy representative of the United States to the International Atomic Energy Agency (referred to . . . as the "Agency"), who shall hold office as the pleasure of the President. Such representative and deputy representative shall represent the United States on the Board of Governors of the Agency, may represent the United States at the General Conference, and may serve ex officio as United States representative of any organ of that Agency, and shall perform such other functions in connection with the participation of the United States in the Agency as the President may from time to time direct.
General Conference Delegate and Alternates	The IAEA Participation Act (Public Law 85–177) as amended (22 U.S.C. 2021b) : The President, by and with the advice and consent of the Senate, may appoint or designate from time to time to attend a specified session or specified sessions of the General Conference of the Agency a representative of the United States and such number of alternates as he may determine consistent with rules of procedure of the General Conference.
International Bank for Reconstruction and Development and International Monetary Fund U.S. Governor Executive Director of Fund Executive Director of Bank	The Bretton Woods Agreement Act (Public Law 79–171) as amended (22 U.S.C. 286 a and b) : SEC. 3(a) The President, by and with the advice and consent of the Senate, shall appoint a governor of the Fund who shall also serve as a governor of the Bank, and an executive director of the Fund and an executive director of the Bank. The executive directors so appointed shall also serve as provisional executive directors of the Fund and the Bank for the purposes of the respective Article of Agreement. The term of office for the governor of the Fund and the Bank shall be five years. The term of office for the executive directors shall be two years, but the executive directors shall remain in office until their successors have been appointed.

Alternate U.S. Governor Alternate U.S. Executive Director of Fund Alternate U.S. Executive Director of Bank	SEC. 3(b) The President, by and with the advice and consent of the Senate, shall appoint an alternate for the governor of the Bank. The President, by and with the advice and consent of the Senate, shall appoint an alternate for each of the executive directors. The alternate for each executive director shall be appointed from among individuals recommended to the President by the executive director. The terms of office for alternates for the governor and the executive directors shall be the same as the terms specified in subsection (a) for the governor and executive directors.
International Finance Corporation	International Finance Corporation Act (Public Law 84-350) as amended, sec. 3 (22 U.S.C. 282a):
U.S. officers same as shown for IBRD	The governor and executive director of the International Bank for Reconstruction and Development, and the alternate for each of them, appointed under section 3 of the Bretton Woods Agreements Act, as amended (22 U.S.C. 286a), shall serve as Governor, Executive Director and alternates, respectively, of the Corporation.
International Development Association	International Development Association Act (Public Law 86-565) as amended, Sec. 3 (22 U.S.C. 284a):
U.S. officers same as shown for IBRD	The Governor and Executive Director of the International Bank for Reconstruction and Development, and the alternate for each of them, appointed under section 3 of the Bretton Woods Agreements Act, as amended (22 U.S.C. 286a), shall serve as Governor, Executive Director and Alternates, respectively, of the Association.
Inter-American Development Bank	Inter-American Development Bank Act (Public Law 88-147) as amended (22 U.S.C. 283):
U.S. Governor Alternate U.S. Governor U.S. Executive Director	SEC. 3(a) The President, by and with the advice and consent of the Senate, shall appoint a Governor of the Bank and an alternate for the governor. The term of office for the governor and the alternate governor shall be five years, but each shall remain in office until a successor has been appointed. SEC. 3(b) The President, by and with the advice and consent of the Senate, shall appoint an Executive Director of the Bank. Except as provided for in Article XV, section 3, of the agreement, the term of office for the Executive director shall be three years, but he shall remain in office until a successor has been appointed.

CHART SHOWING LEGISLATIVE REQUIREMENTS FOR CONFIRMATION TO APPOINTMENTS IN THE FOREIGN AFFAIRS FIELD—Continued

B. Appointments to represent U.S. in international organizations—Continued

North Atlantic Treaty Organization	Mutual Security Act of 1954 (Public Law 83–665), as amended (22 U.S.C. 1928 b):
U.S. Permanent Representative A.E. & P.	The United States permanent representative to the North Atlantic Treaty Organization shall be appointed by the President by and with the advice and consent of the Senate and shall hold office at the pleasure of the President. Such representative shall have the rank and status of ambassador extraordinary and plenipotentiary and shall be a chief of mission, under the Foreign Service Act of 1980.
Asian Development Bank	Asian Development Bank Act (Public Law 89–369), as amended, Sec. 3(a) (22 U.S.C. 285 a):
U.S. Governor Alternate U.S. Governor U.S. Executive Director	The President, by and with the advice and consent of the Senate, shall appoint a Governor of the Bank, an alternate for the Governor, and a Director of the Bank.
African Development Bank	African Development Bank Act. In Omnibus Budget Reconciliation Act (Public Law 97–35) Sec. 1333(a):
	The President, by and with the advice and consent of the Senate, shall appoint a Governor and an Alternate Governor of the Bank. The term of office for the Governor and the Alternate Governor shall be five years, subject at any time to termination of appointment or to reappointment. The Governor and Alternate Governor shall remain in office until a successor has been appointed.
International Joint Commission	Foreign Relations Authorization Act. Fiscal Year 1977 (Public Law 94–350):
	SEC. 115. After the date of enactment of this Act, any commissioner of the International Joint Commission appointed on the part of the United States, pursuant to article VII of the treaty between the United States and Great Britain relating to boundary waters between the United States and Canada, signed at Washington on January 11, 1909 (36 Stat. 2448; TS 548; III Redmond 2607), shall be appointed by the President by and with the advice and consent of the Senate.

APPENDIX IV

SENATE RESOLUTION 258, 95TH CONGRESS, 1ST SESSION

Submitted September 8, 1977, by Mr. Ribicoff (for himself, Mr. Percy, and Mr. Javits). Referred to the Committee on Governmental Affairs. No further action.

RESOLUTION

To create a congressional organization for the purpose of assisting the Senate in its exercise of advice and consent; to provide for regular access by the Senate to investigative reports prepared on nominees by executive branch agencies; to establish standards by which nominees shall be judged by the Senate to be fit and qualified for public office; and for other purposes.

Whereas the duty of advice and consent is an important constitutional responsibility of the Senate;

Whereas the exercise of that duty requires the Senate to inquire into the background, fitness and qualifications of nominees;

Whereas such inquiries are important to an informed and well-reasoned judgment, based on all known facts, by the Senate; and

Whereas systematic inquiry into the background and integrity of nominees to major government positions should be a regular and routine requirement of Senate confirmation; Now, therefore, be it

Resolved, That there is established an office of the Senate to be known as the Office on Nominations (hereinafter referred to as the "Office") to assist the Senate in its confirmation of nominees for Executive Branch departments and agencies, independent regulatory commissions, United States Courts and other offices.

TITLE I—SENATE OFFICE ON NOMINATIONS

SEC. 2. (a) (1) The Office shall be headed by a Director, who shall be appointed by the President pro tempore of the Senate upon the recommendation of the Majority Leader and Minority Leader of the Senate. Provided that if no appointment to this office is made within forty-five (45) days of the date of enactment of this resolution, or within 45 days of the office becoming vacant or of the date of expiration of the term of the director, then the matter shall be referred to the Senate for its decision.

(2) The Director shall be appointed without regard to political affiliation and solely on the basis of fitness to perform the duties of that office. He shall not engage in any other business, vocation, or employment during his term of service except as allowed in Rule XLI of the United States Senate. The term of office of the first Director shall expire on January 1, 1979. Thereafter the term of office of the Director shall be two years, except that any individual appointed to

fill a vacancy prior to the expiration of a term shall serve only for the unexpired portion of that term. An individual serving as Director at the expiration of a term may continue to serve until his successor is appointed and qualified. A Director may be reappointed, and may be removed from office by a majority vote of the Senate.

(3) The Director shall receive compensation at an annual rate equal to the highest rate which may be paid to an employee of a standing committee of the Senate under section 105(e)(3) of the Legislative Branch Appropriation Act, 1968, as amended and modified.

(b)(1) Subject to the approval of the President pro tempore of the Senate, the Director shall appoint and fix the compensation of such personnel and make such other expenditures as may be necessary to carry out the duties and functions of the Office. All personnel of the Office shall be appointed without regard to political affiliation and solely on the basis of their fitness to perform their duties. The Director may prescribe the duties and responsibilities of the personnel of the Office, and delegate to them authority to perform any of the duties, powers, and functions imposed on the Office or on the Director except that the duties imposed on the Director under section 4(b) herein shall not be delegated to any other person.

(2) In carrying out the duties and functions of the Office, the Director may procure the temporary (not exceed one year) or intermittent services of experts or consultants or organizations thereof by contract as independent contractors, or in the case of individual experts or consultants, by employment at daily rates of compensation not in excess of the per diem equivalent of the highest rate of compensation which may be paid to an employee of a standing committee of the Senate under section 105(e)(3) of the Legislative Branch Appropriation Act, 1968, as amended and modified. Such contract shall not be subject to the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5) or any other provision of law requiring advertising. Any such person who will be asked to review confidential information under section 4 herein shall be subject to the same provisions for security clearances as the regular staff of the Office, and shall comply with the confidential procedures of the Office.

(3) Except as otherwise provided herein, all records, papers, and other documents of the Office shall be confidential and shall not be disclosed to the public.

PROCEDURES

SEC. 3. (a)(1) The Secretary of the Senate shall notify the Director of the receipt of any nomination which requires advice and consent of the Senate, and which is subject to review by the Office. Such notice shall be given on the same day that such a nomination is referred to a committee of the Senate. The Office shall review individuals nominated, or renominated, to be—

(i) Officials listed in Executive Levels I, II, III, and IV of the Executive Schedule (5 USC 5312, 5313, 5314, and 5315);

(ii) Justices or Judges, whether to hold office during good behavior or for a term of years;

(iii) Other Judicial Officers, in accordance with a policy to be set by the Senate Committee on Judiciary within 60 days of the effective date of this resolution;

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(iv) Ambassadors and Foreign Service Officers, in accordance with a policy to be set by the Senate Committee on Foreign Relations within 60 days of the effective date of this resolution;

(v) Military officers, in accordance with a policy to be set by the Senate Committee on Armed Services within 60 days of the effective date of this resolution; and

(vi) Any other Officer, which nomination is referred to the Office by a committee of the Senate with jurisdiction over the nomination.

(2) Upon notification by the Secretary of the Senate or by a Committee pursuant to section 3(a)(1)(vi), the Office thereupon shall conduct an inquiry on the nomination. That inquiry shall concern the nominee's background and integrity, but shall not involve any inquiry into the nominee's positions, opinions or beliefs on policy matters. The investigation shall include examination of any proposed blind trust agreement, any contract relating to severance from private employment, and any other document relevant to the nominee's qualifications for the office to which he has been nominated. The Office shall not have the power to issue subpoenas for documents or information. But, the Director may request the committee of the Senate with jurisdiction over the nomination to issue such subpoenas.

(b)(1) As soon as practicable, each nominee subject to this review will submit to the Office biographical and financial information on forms prepared by the Office. Such financial disclosure statement shall include information relating to the nominee's spouse (unless the nominee and his or her spouse are separated) and each member of his family who resides with him. The Director may question a nominee concerning the information provided by the nominee and shall take such steps, consistent with the provisions herein, as he considers necessary to verify the accuracy and completeness of the information. Biographical and financial disclosure statements filed by nominees shall be made available for public inspection during normal business hours. Such statements shall be maintained by the Office until one year after the nominee leaves the Office to which he is appointed, or, in the case of a nomination which is not confirmed, for one year after receipt. Thereafter such statements shall be destroyed.

(2) As soon as practicable, the Office shall review copies of any investigative reports pertaining to the nomination by any Federal, state or local agency which were submitted to the President or his designee as part of his consideration of the nomination. Such investigative information shall be kept confidential except for any notification to the appropriate committee as authorized under this section. The Director shall draft, in consultation with the Attorney General, appropriate procedures for the handling of sensitive information.

(3) As soon as practicable, the Office shall review a statement submitted by the President indicating the reasons for a particular selection and pointing out any relevant factors in the nominee's background or training that qualifies him for appointment. When a person is nominated to a collegial body, and it is the intention of the President to designate that individual as chairman of that body, the Office shall also obtain a statement submitted by the President indicating his intention to designate that individual as chairman. The Office shall forward these statements to the committee with jurisdiction over the nomination.

(c)(1) As soon as practicable, but not later than 15 days after receipt of all the information required to be reviewed by Section 3(b)(1)(2) and (3), the Director shall submit to the Committee, to which such nomination has been referred, a report of the results of his inquiry into the nominee's background and integrity. The report shall not contain any recommendation on the question of whether the Senate should advise and consent to the appointment of the nominee, but shall contain:

(i) The biographical and financial information submitted to the Office by the nominee;

(ii) Copies of any other relevant documents, except those received under section 3(b)(2);

(iii) Summary of the findings of the Office, including any indications of potential sources of conflict or disqualification uncovered by the Office's inquiry; and

(iv) Any other information considered relevant to questions concerning the nominee's background and integrity.

With the approval of the committee to which a nomination has been referred, the period within which such report must be submitted may be extended for not more than 15 additional days. However such committee may request further information from the Director at any time.

(2) All reports submitted to a committee under this subsection shall be confidential and shall not be disclosed to the public, except those portions pertaining to biographical and financial disclosure statements submitted by the nominee, unless the committee by recorded vote orders such reports (or portions thereof) to be disclosed and made available to the public.

(d) No Committee of the Senate to which a nomination subject to this review has been referred, shall take any action on such nomination (including holding hearings) until it has received the report required by this subsection on the nominee's background and integrity.

(e) The provisions of this section shall not be construed as a limitation on the prerogative of the individual committee to conduct, on their own initiative and under their own guidance, whatever investigations on the nominee they may deem to be advisable.

REVIEW OF INVESTIGATIVE REPORTS SUBMITTED BY THE PRESIDENT

SEC. 4(a). The Director shall review investigative reports submitted by the President pursuant to Section 3(b)(2). At the discretion of the Director, responsibility for that review may be delegated to Office staff: *Provided*, That the Director and any such staff must obtain any security clearance which may be required with respect to such reports.

(b) If it is determined that any information may be incriminating, such information shall be brought to the attention of the Director. The Director may require supporting evidence from the appropriate investigative agency if such information is unsubstantiated, and may make any other inquiry, consistent with the provisions herein which he deems to be advisable. If it is determined that serious questions as to the nominee's background or integrity are raised, the Director shall so inform the committee in his report on the nominee.

AUTHORIZATION OF APPROPRIATIONS

SEC. 8. There are authorized to be appropriated to the Office for each fiscal year such sums as may be necessary to enable it to carry out its duties and functions. Until sums as first appropriated pursuant to the preceding sentence, but for a period not exceeding 12 months following the effective date of this Resolution, the expenses of the Office shall be paid from the contingent fund of the Senate, in accordance with the paragraph relating to the contingent fund of the Senate under the heading " UNDER LEGISLATIVE" in the Act of October 1, 1888 (28 Stat. 546; 2 U.S.C. 68), and upon vouchers signed by the Director, except that vouchers shall not be required for payment of salaries of employees paid at an annual rate.

TITLE II. STANDARDS FOR CONFIRMATION

SEC. 1. Rule 38 of the United States Senate is amended—

(1) by striking out "Executive Session—" from the heading;

(2) by striking out paragraph 1;

(3) by renumbering paragraphs 2, 3, 4, 5, and 6 as paragraphs 4, 5, 6, 7, and 8 respectively; and

(4) by adding at the beginning thereof the following new paragraphs:

"1. When nominations shall be made by the President of the United States to the Senate, they shall, unless otherwise ordered, be referred to appropriate committees; and in reviewing nominations the Senate shall inquire as to the nominee's positive qualifications for the position for which he is being considered.

"2. In determining whether to advise and consent to a nomination, the following general standards shall be applied by the Senate and its committees:

"(A) By reason of background, training, or experience, the nominee is affirmatively qualified for the office to which he or she has been nominated.

"(B) The personal and professional integrity of the nominee shall be taken into consideration, and whether the nominee should be disqualified due to conflicts of interest.

"(C) The nature and needs of the particular office to which the individual was nominated, the nominee's commitment to the enforcement of applicable statutes and regulations (in the case of an agency appointment) or to the administration of law (in the case of a judicial appointment), shall be taken into consideration.

"(D) In the case of a collegial body, the existing composition of that body, and whether or not members of a single sector or group are too heavily represented, shall be taken into consideration.

"(E) The nominee meets the statutory qualifications to hold the office to which he or she has been nominated.

"3. The final question on every nomination shall be, 'Will the Senate advise and consent to this nomination?' which question shall not be put on the same day on which the nomination is received, nor on the day on which it may be reported by a committee, unless by unanimous consent."

APPENDIX V

Key State Department officials, 1945–81

	1945–49	1949–53	1953–57
Secretary	James F. Byrnes (7/3/45–1/21/47) George C. Marshall (1/21/47–1/20/49)	Dean G. Acheson (1/21/49–1/20/53)	John Foster Dulles (1/21/53–4/22/59)
Under Secretary	Dean G. Acheson (8/16/45–6/30/47) Robert A. Lovett (7/1/47–1/20/49)	James E. Webb (1/28/49–2/29/52) David K. E. Bruce (4/1/52–1/20/53)	Walter B. Smith (2/9/53–10/1/54) Herbert Hoover, Jr. (10/4/54–2/5/57)
Under Secretaries for Economic Affairs—E; Political Affairs—P; Administration—A.	William L. Clayton—E (8/17/46–10/15/47)	----------	Donald B. Lourie—A (2/16/53–3/5/54) Charles E. Saltzman—A (6/29/54–12/31/54)
Deputy Under Secretaries for Economic Affairs—E; Political Affairs—P; Administration—A.	----------	Dean Rusk (5/26/49–3/28/50) H. Freeman Matthews—P (7/5/50–10/11/53) John E. Peurifoy—A (5/31/49–8/11/50) Carlisle H. Humelsine—A (8/11/50–2/13/53)	Samuel C. Waugh—E (8/26/55–10/1/55) Herbert V. Prochnow—E (11/7/55–11/15/56) Robert D. Murphy—P (11/30/53–8/13/59) Loy W. Henderson—A (1/26/55–1/31/61)
Assistant Secretaries, Inter-American Affairs.[1]	Spruille Braden (10/29/45–6/30/47)	Edward G. Miller, Jr. (6/28/49–12/31/52)	John M. Cabot (3/3/53–3/2/54) Henry F. Holland (3/2/54–8/14/56)

See footnotes at end of table.

Key State Department officials, 1945–81—Continued

	1945–49	1949–53	1953–57
European Affairs	James C. Dunn (12/20/44–11/11/46)	George W. Perkins (8/1/49–1/31/53)	Livingston T. Merchant (3/16/53–5/6/56) (11/18/58–8/20/59)
East Asian and Pacific Affairs	James C. Dunn (12/20/44–11/11/46)	W. Walton Butterworth (9/29/49–3/28/50) Dean Rusk (3/28/50–12/6/51) John M. Allison (2/7/52–4/8/53)	Walter S. Robertson (4/8/53–7/1/59)
Near Eastern and South Asian Affairs [2]	James C. Dunn (12/20/44–11/11/46)	George C. McGhee (6/28/49–12/19/51) Henry A. Byroade 4/14/52–1/23/55)	Henry A. Byroade 4/14/52–1/23/55) George V. Allen (1/26/55–8/27/56)
African Affairs	James C. Dunn (12/20/44–11/11/46)		
Economic Affairs	William L. Clayton (12/20/44–8/17/46) Willard L. Thorp (11/15/46–11/15/52)	Willard L. Thorp (11/15/46–11/15/52) Harold F. Linder (12/12/52–5/15/53)	Samuel C. Waugh (6/5/53–8/25/55)
International Organization Affairs [3]		Dean Rusk (2/9/49–5/26/49) John D. Hickerson (8/8/49–7/27/53)	Robert D. Murphy (7/28/53–11/30/53) David McK. Key (12/18/53–7/31/55)

Administration	Donald S. Russell (10/12/45–1/20/47 John E. Puerifoy (3/17/47–5/31/49)		Edward T. Wailes (5/29/53–6/22/54) Isaac W. Carpenter, Jr. (6/23/54–1/25/55) (8/11/55–12/15/57)
Congressional Relations	Dean G. Acheson (12/20/44–8/15/45)	Ernest A. Gross (3/4/49–10/13/49) Jack K. McFall (10/14/49–9/2/52)	Thruston B. Morton (1/30/53–2/29/56) Robert C. Hill (3/9/56–6/26/57)
Public Affairs	William Benton (9/17/45–9/30/47) George V. Allen (3/31/48–12/29/49)	Edward W. Barrett (2/16/50–2/20/52) Howland H. Sargeant (2/21/52–1/29/53)	Carl W. McCardle (1/30/53–3/1/57)
Education and Cultural Affairs			
Administrator of Security and Consular Affairs.			
Counselor			
Legal Adviser	Green H. Hackworth (7/1/31–3/1/46) Charles Fahy (6/19/46–8/15/47) Ernest A. Gross (8/15/47–3/2/49)	Adrian S. Fisher (6/28/49–1/27/53)	Herman Phleger (2/2/53–4/1/57)
Inspector General, Foreign Assistance			
Deputy Inspector General, Foreign Assistance.			

See footnotes at end of table.

Key State Department officials, 1945–81—Continued

	1957–61	1961–65	1965–69
Secretary	John Foster Dulles (1/21/53–4/22/59) Christian A. Herter (4/22/59–1/20/61)	Dean Rusk (1/21/61–1/20/69)	Dean Rusk (1/21/61–1/20/69)
Under Secretary	Christian A. Herter (2/21/57–4/22/59) C. Douglas Dillon (6/12/59–1/4/61)	Chester Bowles (1/25/61–12/3/61) George W. Ball (12/3/61–9/30/66)	George W. Ball (12/3/61–9/30/66) Nicholas deB. Katzenbach (10/3/66–1/20/69)
Under Secretaries for Economic Affairs—E; Political Affairs—P; Administration—A.	C. Douglas Dillon—E (7/1/58–6/11/59) Robert D. Murphy—P (8/14/59–12/3/59) Livingston T. Merchant—P (12/4/59–1/31/61)	George W. Ball—E (2/1/61–12/3/61) George C. McGhee—P (11/29/61–3/27/63) W. Averell Harriman—P (4/8/63–3/11/65)	Eugene V. Rostow—P (10/4/66–1/20/69) Thomas C. Mann—E (3/18/65–6/1/66)
Deputy Under Secretaries for Economic Affairs—E; Political Affairs—P; Administration—A.	C. Douglas Dillon—E (3/15/57–6/30/58) Livingston T. Merchant—P (8/21/59–12/3/59) Raymond A. Hare—P (1/25/60–5/1/61) Loy W. Henderson—A (1/26/55–1/31/61)	U. Alexis Johnson—P (5/2/61–6/26/64) Llewellyn Thompson—P (interim) Roger W. Jones—A (2/1/61–6/30/62) William Orrick, Jr.—A (7/2/62–6/7/63) William J. Crockett—A (6/7/63–12/31/66)	William J. Crockett—A (6/7/63–12/31/66) Idar Rimestad—A (2/3/67–10/18/69) U. Alexis Johnson—P (9/27/65–8/31/66) Foy Kohler—P (11/29/66–12/31/67) Charles E. Bohlen—P (2/12/68–1/31/69)

Assistant Secretaries, Inter-American Affairs.[1]	Roy R. Rubottom, Jr. (6/18/57–8/26/60) Thomas C. Mann (9/1/60–4/20/61)	Robert F. Woodward (7/1/61–3/7/62) Edwin M. Martin (5/12/62–12/19/63) Thomas C. Mann (12/21/63–3/18/65)	Jack Hood Vaughn (3/22/65–2/25/66) Lincoln Gordon (3/19/66–6/30/67) Covey T. Oliver (7/1/67–12/31/68)
European Affairs	C. Burke Elbrick (2/14/57–10/29/58) Foy D. Kohler (12/11/59–8/24/62)	Foy D. Kohler (12/11/59–8/24/62) William Tyler (8/20/62–5/6/65)	John M. Leddy (6/16/65–2/28/69)
East Asian and Pacific Affairs	Walter S. Robertson (4/8/53–7/1/59) J. Graham Parsons (7/1/59–3/30/61)	Walter P. McConaughy (4/18/61–12/3/61) W. Averell Harriman (11/29/61–4/4/63) Roger Hilsman (4/25/63–3/15/64) William P. Bundy (3/10/64–5/1/69)	William P. Bundy (3/10/64–5/1/69)
Near Eastern and South Asian Affairs [2]	William M. Rountree (8/30/56–6/18/59) G. Lewis Jones (7/10/59–4/20/61)	Phillips Talbot (4/21/61–4/18/65)	Raymond A. Hare (9/11/65–11/30/66) Lucius Battle (4/13/67–9/30/68) Parker T. Hart (10/14/68–2/4/69)
African Affairs	Joseph C. Satterthwaite (9/2/58–1/31/61)	G. Mennen Williams (2/1/61–4/1/66)	G. Mennen Williams (2/1/61–4/1/66) Joseph Palmer, 2d (4/1/66–7/17/69)

See footnotes at end of table.

Key State Department officials, 1945–81—Continued

	1957–61	1961–65	1965–69
Economic Affairs	Thorsten V. Kalijarvi (3/14/57–9/7/57) Thomas C. Mann (9/30/57–9/1/60)	Edwin M. Martin (9/1/60–5/12/62) G. Griffith Johnson (5/12/62–6/1/65)	G. Griffith Johnson (5/12/62–6/1/65) Andrew Soloman (6/1/65–1/10/69)
International Organization Affairs [3]	Francis O. Wilcox (9/6/55–1/20/61)	J. Harlan Cleveland (2/20/61–9/1/65)	Joseph J. Sisco (9/1/65–2/10/69)
Administration	Walter S. Scott (3/21/58–6/29/59) Lane Dwinell (7/23/59–2/22/61)	William J. Crockett (2/20/61–6/7/63) Dwight J. Porter (10/1/63–3/18/65)	Inactive.
Congressional Relations	William B. Macomber, Jr. (10/21/57–3/7/61)	Brooks Hays (2/28/61–12/3/61) Frederick G. Dutton (11/29/61–7/7/64) Robert E. Lee (interim)	Douglas MacArthur II (3/14/65–3/7/67) William B. Macomber (3/7/67–10/3/69)
Public Affairs	Andrew H. Berding (3/28/57–3/2/61)	Roger W. Tubby (3/10/61–4/10/62) Robert Manning (4/4/62–7/31/64) James Greenfield (9/10/64–3/7/66)	James Greenfield (9/10/64–6/17/66) Dixon Donnelley (3/22/66–1/31/69)

Education and Cultural Affairs		Phillip H. Coombs (3/23/61–3/7/62) Lucius D. Battle (6/5/62–8/20/64) Harry C. McPherson (8/26/64–9/15/65)	Charles Frankel (9/15/65–12/31/67) Edward Dominick Re (2/28/68–1/9/69)
Administrator of Security and Consular Affairs.			Abba P. Schwartz (10/5/62–3/6/66) Philip B. Heymann (3/10/66–4/17/67) Barbara M. Watson (4/17/67 acting) (8/12/68 official—S.A.)
Counselor		W. W. Rostow (12/6/61–3/31/66)	Robert W. Bowie (9/27/66–4/1/68)
Legal Adviser	Loftus E. Becker (6/14/57–8/15/59) Erik H. Hager (9/9/59–1/20/61)	Abram Chayes (2/9/61–6/27/64)	Leonard C. Meeker (5/26/65–6/7/69)
Inspector General, Foreign Assistance		John K. Mansfield (5/23/62-9/19/69)	John K. Mansfield (5/23/62–9/19/69)
Deputy Inspector General, Foreign Assistance.		Norris S. Haselton (11/15/61–5/12/62) Francis P. Cotter (6/22/62–5/31/63) Howard E. Haugerud (7/22/63 reappointed under Public Law 88–205 on 4/10/64-9/19/69)	Howard E. Haugerud (7/22/63; reappointed under Public Law 88–205 on 4/10/69–9/19/69)

See footnotes at end of table.

Key State Department officials, 1945–81—Continued

	1969–73	1973–77	1977–81	1981–
Secretary	William P. Rogers (1/22/69–9/3/73)	Henry A. Kissinger (9/21/73–1/20/77)	Cyrus Vance (1/21/77–4/28/80) Edmund S. Muskie (5/8/80–1/18/81)	Alexander M. Haig, Jr. (1/22/81—resigned 6/25/82)
Deputy Secretary (formerly Under Secretary).	Elliot L. Richardson (1/23/69–6/23/70) John N. Irwin II (9/18/70–2/1/73)	Kenneth Rush (2/2/73–5/29/74) Robert S. Ingersoll (6/30/74–3/31/76) Charles W. Robinson (4/7/76–1/20/77)	Warren Christopher (2/25/77–1/16/81)	William P. Clark (3/25/81–1/26/82) Walter Stoessel, Jr. (2/11/82—)
Under Secretary for Economic Affairs.	Nathaniel Samuels—E (4/2/69–1973)	William J. Casey—E (2/2/73–3/13/74) Charles W. Robinson—E (12/9/74–4/7/76) William D. Rogers—E (6/16/76–12/31/76)	Richard N. Cooper—E (4/7/77–1/19/81)	Meyer Rashish—E (6/12/81—)
Under Secretary for Political Affairs.	U. Alexis Johnson—P (2/7/69–2/1/73)	William J. Porter—P (2/2/73–2/11/74) Joseph J. Sisco—P (2/11/74–6/30/76)	Philip C. Habib—P (6/16/76–4/1/78) David D. Newsom—P (4/13/78–2/27/81)	Walter Stoessel, Jr.—P (2/27/81–1/26/82) Lawrence S. Eagleburger (2/12/82—)
Under Secretary for Coordinating Security Assistance Programs.	Curtis Tarr (5/1/72–11/30/73)	William H. Donaldson (11/23/73–5/10/74) Carlyle E. Maw (6/30/74–9/17/76)	Lucy W. Benson (3/23/77–1/5/80) Matthew Nimetz (2/19/80–12/5/80)	James L. Buckley (2/27/81–S.A.)
Under Secretary for Management (was formerly Deputy Under Secretary for Administration).	Idar Rimestad (1/26/67–9/25/69) William B. Macomber, Jr. (9/26/69–1973)	L. Dean Brown (12/19/73–2/23/75) Lawrence S. Eagleburger (5/8/75–2/24/77)	Richard M. Moose (3/16/77–7/5/77) Benjamin H. Read (8/3/77–1/14/81)	Richard T. Kennedy (2/27/81–S.A.)

Assistant Secretary, Inter-American Affairs.	Charles A. Meyer (3/28/69–3/2/73)	Jack B. Kubisch (5/23/73–8/22/74) William D. Rogers (10/1/74–6/15/76) Harry W. Shlaudeman (6/16/76–3/14/77)	Terence A. Todman (3/23/77–6/27/78) Viron P. Vaky (7/18/78–11/30/79) William G. Bowdler (12/17/79–1/16/81)	Thomas O. Enders (6/20/81—)
Assistant Secretary, European Affairs.	Martin J. Hillenbrand (2/7/69–6/30/72) Walter J. Stoessel, Jr. (7/25/72–12/18/73)	Arthur A. Hartman (12/19/73–6/7/77)	George S. Vest (5/26/77–4/14/81)	Lawrence S. Eagleburger (5/14/81–2/12/82)
Assistant Secretary, East Asian and Pacific Affairs.	Marshall Green (5/1/69–3/26/73)	Robert S. Ingersoll (12/19/73–6/29/74) Philip C. Habib (9/19/74–6/15/76) Arthur Hummel, Jr. (6/16/76–3/14/77)	Richard Holbrooke (3/23/77–1/13/81)	John H. Holdridge (5/20/81—)
Assistant Secretary, Near Eastern and South Asian Affairs.	Joseph J. Sisco (2/7/69–2/18/74)	Alfred L. Atherton, Jr. (4/25/74–4/13/78)	Harold H. Saunders (4/7/78–1/16/81)	Nicholas A. Veliotes (5/14/81—)
Assistant Secretary, African Affairs.	David Newsom (7/8/69–12/18/73)	Donald B. Easum (2/27/74–3/25/75) Nathaniel Davis (3/17/75–11/19/75) William Schaufele, Jr. (12/11/75–7/17/77)	Richard M. Moose (6/16/77–1/16/81)	Chester A. Crocker (6/9/81—)
Assistant Secretary, Economic and Business Affairs (formerly Economic Affairs).	Phillip H. Trezise (7/8/69–11/27/71) Willis C. Armstrong (2/14/72–4/16/74)	Thomas O. Enders (6/30/74–12/21/75) Joseph A. Greenwald (1/29/76–9/10/76)	Deane R. Hinton (12/21/79–5/13/81) Julius L. Katz (9/16/76–11/29/79)	Robert D. Hormats (5/7/81—)
Assistant Secretary, International Organization Affairs.	Samuel De Palma (2/7/69–6/20/73) David H. Popper (6/12/73–12/18/73)	William B. Buffum (12/19/73–12/18/75) Samuel W. Lewis (12/22/75–4/25/77)	Charles W. Maynes, Jr. (4/7/77–4/9/80) Richard L. McCall, Jr. (6/5/80–1/21/81)	Elliott Abrams (5/7/81–12/9/81)

See footnotes at end of table.

Key State Department officials, 1945–81—Continued

	1969–73	1973–77	1977–81	1981–
Assistant Secretary, Administration.	Francis G. Meyer (9/26/69–5/31/71) Joseph Donelan, Jr. (6/14/71–3/31/73)	John M. Thomas (11/23/73–6/28/79)	John M. Thomas (11/23/73–6/28/79) John M. Tracy (9/20/79—)	
Assistant Secretary, Congressional Relations.	Horace R. Torbert, Jr. (10/3/69–4/20/70) (acting) David M. Abshire (4/8/70–1/8/73)	Marshall Wright (5/24/73–2/14/74) A. Linwood Holton (2/24/74–1/31/75) Robert J. McCloskey (2/20/75–9/2/76)	Douglas J. Bennet, Jr. (3/16/77–8/1/79) J. Brian Atwood (8/2/79–1/14/81)	Richard Fairbanks (2/27/81–2/82) Powell Moore (2/8/82—)
Assistant Secretary, Public Affairs.	Richard I. Philips (1/69–1/70) (acting) Michael Collins (12/15/69–4/11/71) William D. Blair (4/11/71—)	Carol C. Laise (9/20/73–3/27/75) John E. Reinhardt (3/25/75–3/22/77)	Hodding Carter III (3/23/77–6/30/80) William J. Dyess (8/27/80–7/29/81)	Dean Fischer (7/27/81—)
Assistant Secretary, Education and Cultural Affairs.	John Richardson, Jr. (7/8/69–3/7/73)	John Richardson, Jr. (3/7/73–3/7/77)	Joseph D. Duffey (3/30/77–3/21/78) Alice S. Ilchman (3/21/78–1978)	Position transferred to International Communications Agency in 1978.
Assistant Secretary for Consular Affairs (formerly Bureau of Security and Consular Affairs).	Barbara M. Watson (7/31/68–7/31/74)	Leonard Walentynowicz (12/31/74–3/7/77)	Barbara M. Watson (4/7/77–3/19/80)	Diego C. Asencio (4/27/80—)
Assistant Secretary for Oceans and International Environmental and Scientific Affairs.	----------	Dixie Lee Ray (1/19/75–6/20/75) Frederick Irving (3/29/76–3/26/77)	Patsy T. Mink (3/23/77–5/1/78) Thomas Pickering (9/23/78–2/24/81)	James L. Malone (5/22/81—)

Assistant Secretary of State for Human Rights and Humanitarian Affairs.		James M. Wilson, Jr. (11/17/76–4/28/78)	Patricia Derian (6/8/77–1/19/81)	Elliott Abrams (11/23/81—)
Assistant Secretary of State for International Narcotics Matters.			K. Mathea Falco (2/6/79–1/21/81)	Dominick DiCarlo (9/19/81—)
Counselor	Richard F. Pedersen (1/23/69–7/26/73)	Helmut Sonnenfeldt (12/19/73–2/21/77)	Matthew Nimetz (3/20/77–2/18/80) Rozanne L. Ridgeway (3/18/80–2/23/81)	Robert C. McFarlane (2/27/81–1/12/82)
Legal Adviser	John R. Stevenson (7/8/69–3/9/73)	Carlyle E. Maw (11/23/73–6/29/74) Monroe Leigh (12/20/74–1/20/77)	Herbert J. Hansell (3/30/77–9/20/79) Roberts B. Owen (9/28/79–2/16/81)	Davis R. Robinson (7/27—)
Director General of the Foreign Service.				Joan M. Clark (7/27/81—)
Inspector General of the Department of State and the Foreign Service.				Robert L. Brown (6/24/81—)
United States Coordinator for Refugee Affairs and Ambassador at Large serving in this position.			Dick Clark (3/30/79–10/30/79) Victor H. Palmieri (12/20/79–1/21/81)	H. Eugene Douglas (10/29/81—)

S.A.—means Still Active.
[1] Designated American Republic Affairs until 10/3/49.
[2] Included African Affairs until 8/20/58.
[3] Designated United Nations Affairs until 8/25/54.

Source: Key State Department Officials, 1945–55. Congressional Quarterly. Congress and the Nation, 1945–1964, pp. 100–101. Revised and brought up to date with information provided by the Department of State.

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